

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7879 OF 2019**

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|----|--------------------------------------|------------------|
| 1. | The State of Maharashtra |) |
| | through its Secretary, |) |
| | Higher and Technical Education |) |
| | Department, Mantralaya, Mumbai-32 |) |
| 2. | The Director of Technical Education, |) |
| | M.S.-3, Mahapalika Marg, Mumbai-1 |) |
| 3. | The Principal |) |
| | Government Polytechnic, Solapur |) |
| | Akkalkot Road, Solapur. |)... Petitioners |

VERSUS

Archana Prakash Charate	)
Age 40 years,	)
R/o. Tilari Colony,	)
Executive Engineer Bungalow,	)
Sawantwadi, Charata,	)
Dist. - Sindhudurg.	)... Respondents

Appearances

Mr. L. M. Acharrya, *Spl. Counsel a/w. Mr. N. K. Rajpurohit, AGP a/w. Mr. Anish Khandekar & Mr. Anirudh Gollapudi & Ms. Uroosa Naiveen for Petitioner.*

Ms. Pradnya Talekar, *i/b. Talekar & Associates for Respondent.*

CORAM : **S. V. Gangapurwala, ACJ & Sandeep V. Marne, J.**

RESERVED ON : **29th March 2023.**

PRONOUNCED ON : **6th April 2023.**

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

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

THE CHALLENGE:-

2. The State of Maharashtra has filed the present petition challenging the judgment and order dated 10th April 2019 passed by the Maharashtra Administrative Tribunal, Mumbai ('**Tribunal**') in the Original Application No.216 of 2016. The Original Application was instituted by the respondent challenging order dated 7th September 2012 relieving her from the post of Lecturer as well as order dated 13th October 2015 rejecting her application for reinstatement and absorption in service. By the judgment and order impugned in the present petition, the Tribunal has allowed the Original Application by setting aside the orders dated 7th September 2012 and 13th December 2015 and directing petitioners to reinstate her on the post of Lecturer. The Tribunal has further directed petitioners to absorb her in service on par with other lecturers whose services are regularized by Government Resolutions dated 14th January 2015 and 13th March 2015.

FACTS :-

3. A brief factual narration as prologue to the judgment would be necessary. On account of ban imposed by the State

Government on recruitment in all departments, several vacant posts in Government and Non-Government aided educational institutions could not be filled up. Therefore, on 25th July 2002, the State of Maharashtra took a policy decision for making appointments on the post of lecturer on contract basis till availability of candidates appointed through regular selection process conducted by MPSC. By way of policy decision dated 27th July 2002, approval was granted for filling up 2/3rd vacancies on contract basis. Though the decision was stayed by Government Resolution dated 19th July 2003, the stay was vacated vide Government Resolution dated 2nd August 2003. By subsequent Government Resolution dated 19th August 2003, it was decided to fill up 100% of vacancies of teaching posts on contract basis.

4. In view of the policy decision so taken, the Directorate of Technical Education issued advertisement for filling up vacant posts of lecturers in various Government Polytechnics on contract basis for a period of 2 years or until availability of nominated candidates from MPSC, whichever was earlier. Appointments were to be made on consolidated salary. The respondent applied in pursuance of said advertisement and participated in the selection process. By order dated 5th November 2007, several individuals, including the respondent, came to be appointed as Lecturers on contract basis on consolidated monthly salary of Rs.12,000/- for a period of 2 years or till availability of MPSC selected candidate, whichever was earlier. The respondent was selected and appointed in Government Polytechnic, Osmanabad in OBC category. The appointment order shows that

principle of reservation was followed while making contractual appointments. She accordingly joined the post of Lecturer in Government Polytechnic, Osmanabad. Upon expiry of period of 2 years, fresh appoint order was issued on 19th November 2009 appointing her as Lecturer in Government Polytechnic, Solapur on contract basis from 1st December 2010 to 31st October 2012 on consolidated salary of Rs.12,000/-.

5. Though the tenure of Respondent's appointment was up to 31st October 2012, she came to be relieved from service by order dated 7th September 2012 on the ground that one Shri. G. G. Ovarikar was transferred on administrative ground against vacancy created by transfer of contract lecturer and that Shri. Ovarikar joined w.e.f. 6th September 2012. Respondent was treated as junior most contract lecturer and therefore she was relieved from duties w.e.f. 6th September 2012. After her relief, an order dated 12th November 2012 was passed continuing services of other contract lecturers, which included name of Shri. S. C. Bulla, Lecturer - Anuvidyut. The order did not include Respondent's name. This is how though the Order dated 7th September 2012 merely relived Respondent, the same had the effect of termination of her services.

6. Several contract lecturers working in various Government Polytechnics filed Writ Petition No.2046 of 2010 before Nagpur Bench of this Court (**Sachin Ambadas Dawale Vs. State of Maharashtra**). By judgment and order dated 19th October 2013, this court directed

regularization of services of petitioners therein on completion of 3 years of service with technical breaks. The Special Leave Petition filed against the judgment of this court came to be rejected by the Supreme Court by order dated 6th January 2015. The State Government issued Government Resolution dated 14th January 2015 regularizing services of 62 contract lecturers from the dates of their initial appointment.

7. Respondent made representation dated 1st March 2015 seeking appointment at Government Polytechnic, Malvan. She made further representation dated 11th March 2015 seeking regular appointment in accordance with Government Resolution dated 14th January 2015. The State Government thereafter issued Government Resolution dated 13th March 2015 regularizing services of 317 contract lecturers following the dictum of this court in **Sachin Ambadas Dawale**. By that Government Resolution, services of Shri. N. C. Bulla were also regularized w.e.f. 15th January 2008. Respondent continued her efforts and made representations dated 1st April 2015, 21st April 2015 and 27th April 2015. By communication dated 13th October 2015, her request for regularization came to be rejected.

8. Respondent challenged termination order dated 7th September 2012 and communication dated 13th October 2015 before the Tribunal by filing Original Application No.216 of 2016. By the judgment and order dated 10th April 2019, the Tribunal has allowed the Original Application setting aside the termination order dated 7th September 2012 as well as communication dated 13th October 2015. The Tribunal

has directed reinstatement of the respondent on the post of Lecturer - Electronics and Telecommunication in the Government Polytechnic. The Tribunal has further directed to absorb her in service in terms of the Government Resolution dated 14th January 2015 and 13th March 2015. The State Government has filed the present petition challenging Tribunal's judgment and order dated 10th April 2019. It appears that since the directions of the Tribunal were not implemented, respondent moved Contempt Petition before the Tribunal. Only on that count, this court recorded statement of the counsel for the respondent on 9th October 2019 that she shall not proceed with the Contempt Petition. That statement has been continued from time to time and continues to operate till date.

SUBMISSIONS:-

9. Appearing for petitioner-State Government, Mr. Acharrya the learned special counsel would submit that the respondent acquiesced in her termination by not setting up challenge thereto for 4 long years. That she accepted the relieving order dated 7th September 2012 without any demur and made first representation only after delivery of judgment of this court in **Sachin Dawale**. That respondent otherwise was not aggrieved by her relieving/ termination of services. Therefore, the Tribunal ought not to have entertained the Original Application challenging the termination order after 4 long years.

10. Mr. Acharrya would further contend that the stipulations in the appointment orders of the respondent were clear that her appointment

was to continue either till the specified date or till availability of MPSC selected candidate. He would submit that Shri. Ovarikar was regular lecturer selected through MPSC and on account of availability of MPSC candidate, the respondent was rightly relieved on 7th September 2012. He would further submit that the respondent is otherwise not entitled to be regularized in service. That the judgment in **Sachin Dawale** has subsequently been clarified by the same Bench on 27th April 2017 and 21st November 2017 and that therefore the judgment can no longer be relied upon for regularization of all lecturers completing 3 years of service.

11. Mr. Acharrya would further submit that the directions issued by the Tribunal for absorption of the respondent are in the teeth of the ratio of the Constitution Bench judgment in the **Secretary, State of Karnataka & Ors. Vs. Umadevi and Ors.**, (2006) 4 SCC 1. In support of his contentions, Mr. Acharrya would rely upon following judgments.

- i) Union of India, through the Secretary, Department of Industrial Policy & Promotion and Another Vs. Lalita V. Mertia, 2021 SCC OnLine Bom 3363.
- ii) Secretary, State of Karnataka & Ors. Vs. Umadevi and Ors., (2006) 4 SCC 1.
- iii) Punjab Water Supply & Sewerage Board Vs. Ranjodh Singh and Ors., (2007) 2 SCC 491.
- iv) State of Maharashtra & Ors. Vs. Anita & Anr., (2016) 8 SCC 293.

- v) State of Orissa Vs. Chandra Sekhar Mishra, (2002) 10 SCC 583.
- vi) Ganesh Digamber Jambhurkar & Ors Vs. State of Maharashtra & Ors., 2022 SCC OnLine Bom 2676.

12. *Per contra* Ms. Talekar, the learned counsel appearing for respondent would oppose the petition and support the order passed by the Tribunal. She would submit that all the contract lecturers were appointed along with respondent by order dated 5th November 2007 (who continued to remain in service) came to be regularized. She would further submit that Mr. S. C. Bulla was appointed on contract basis on 15th January 2008 after Respondent and therefore at the relevant time on 7th September 2012, she was not the juniormost lecturer in Government Polytechnic, Solapur. If any contract lecturer was to be relieved to accommodate Shri. Ovarikar, it ought to have been Shri. S. C. Bulla and not the respondent.

13. Ms. Talekar would further submit that Shri. Ovarikar was not a fresh candidate selected through MPSC. He was merely a transferee to Government Polytechnic, Solapur. She would further submit that language employed in the relieving order dated 7th September 2012 would indicate that there was already a vacant post created on account of 'transfer' of contract lecturer, against whom Shri. Ovarikar was posted. Thus, the order indicates that there was no necessity of terminating Respondent's services for accommodating Shri. Ovarikar. That therefore the order of termination is clearly erroneous.

14. So far as the regularization is concerned Ms. Talekar would submit that Shri. S. C. Bulla has been regularized in service w.e.f. his initial appointment i.e. 15th January 2008. That though Respondent is similarly situated as that of several other contract lecturers, she has been erroneously deprived of right of regularization on account of her erroneous termination.

15. So far as delay in filing Original Application in challenging the termination is concerned, Ms. Talekar would contend that since the delay has already been condoned by the Tribunal in exercise of discretion, this court would be loathe in interfering with the discretion exercised by the Tribunal. In support of her contention, she would rely upon judgment of the Supreme Court in **N. Balkrishnan Vs. M. Krishnamurthy**, (1998) 7 SCC 123.

16. She would further submit that since all other similarly situated colleagues of Respondent are regularisee, no fault can be found in the order of the Tribunal in directing respondent's regularization. In support of this contention, she would rely upon the judgment in **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Shrivastava & Ors.**, (2015) 1 SCC 347.

REASONS AND ANALYSIS :-

17. The Tribunal has granted twin reliefs to Respondent viz. (i) setting aside termination order dated 7th September 2012 and (ii)

directing regularization of her services on par with other contract lecturers who are regularized vide Government Resolutions dated 14th January 2015 and 13th March 2015. We proceed to examine the correctness of both the directions issued by the Tribunal.

18. We would first examine the issue of termination of respondent's services. The last appointment order of respondent was issued on 29st November 2011. The tenure of the appointment was from 1st December 2011 to 31st October 2012 or till availability of MPSC recommended candidate or regularly selected candidate, whichever was earlier. Before her tenure could come to an end on 31st October 2012, the Principal, Government Polytechnic, Solapur issued order dated 7th September 2012 relieving respondent from services. Perusal of the order dated 7th September 2012 would indicate that respondent is treated as juniormost lecturer. Her relieving was ordered on account of administrative transfer of Shri. G. G. Ovarikar.

19. It is contention of the State Government that Shri. Ovarikar is a regular Lecturer - Anuvidyut and on account of his availability, respondent was relieved w.e.f. 6th September 2012, as she was the junior most contract lecturer. At the time when respondent was relieved on 7th September 2012, Shri. N. C. Bulla was functioning as contract Lecturer - Anuvidyut. The date of his initial appointment as contract lecturer appears to be 15th January 2008. As against this, the date of initial appointment of respondent is 5th November 2007. Therefore, the assumption of the Principal, Government Polytechnic,

Solapur that Respondent was the junior most contract lecturer appears to be erroneous. Both respondent and Shri. N. C. Bulla were contract lecturers of same discipline i.e. Anuvidyut. Thus, even if Shri. Ovarikar was to be accommodated by displacing the junior most contract lecturer, the Principal ought to have displaced Shri. N. C. Bulla and not the respondent. This is the first reason why Respondent's relieving order dated 7th September 2012 appears to be erroneous.

20. Perusal of the termination order dated 7th September 2012 would indicate that Shri. Ovarikar was to be posted against a vacant post on account of 'transfer' of a contract lecturer. Thus, either the vacancy already existed on account of transfer of some contract lecturer or one of the contract lecturers had to be transferred after 6th September 2012 for accommodating Shri. Ovarikar. Since the word 'transfer' is used as a source for creation of vacancy of Lecturer - Anuvidyut, there was no necessity of relieving / terminating any of the contract lecturer. This is the second reason why the relieving/termination order dated 7th September 2012 appears to be erroneous.

21. No doubt, the respondent did not challenge termination/ relieving order dated 7th September 2012 immediately. On 6th September 2012 respondent was not on duty as she was sick. Therefore, the exact date of receipt of order dated 7th September 2012 is unknown. The contention of the State Government that the respondent accepted the termination order without demur appears to be erroneous as she

addressed representation dated 14th December 2012. The contents of the representation shows that she expected an order of transfer as she was merely relieved by order dated 7th September 2012. She was also not paid salary from 1st July to 6th September 2012. She also contended in her representation that the Principal had confirmed her transfer at Government Polytechnic, Malvan. She accordingly prayed for issuance of an appointment order in her favour. She did not receive any response. In the meantime, this court delivered judgment in *Sachin Dawale* on 19th October 2013. After unsuccessful challenge to the judgment of this court before the Apex Court, the State Government issued Government Resolution dated 14th January 2015 regularizing services of similarly placed contractual employees therein w.e.f. the dates of their initial appointments. Respondent made representation dated 1st March 2015 once again requesting for issuance of an appointment order in her favour. On 11th March 2015 she addressed a representation to the Hon'ble Minister for State Higher and Technical Education Department, on which an endorsement was made requesting Director to consider her case sympathetically. It appears that her case was taken up by the Director who addressed communication dated 23rd March 2015 to Principal, Government Polytechnic, Solapur calling for information. Respondent went on making representations dated 3rd April 2015 and 27th April 2015. Finally, her request came to be turned down by communication dated 13th October 2015.

22. The above chronology would indicate that respondent was

always vigilant in respect of her rights. In fact, the manner in which she was relieved from services would indicate total arbitrariness on the part of petitioners. Her services were not terminated. She was merely relieved from Government Polytechnic, Solapur. She was relieved in her absence when she was on medical leave. When she was relieved, she expected an order of transfer to another Government Polytechnic. However, neither any order of transfer was issued nor any order terminating her services was issued. She was not even paid salary from 1st July to 6th July 2012.

23. The Tribunal has considered the aspect of delay in filing the Original Application. Respondent filed Miscellaneous Application No.359 of 2017 seeking condonation of delay. It was pleaded in the application that after making representation dated 14th December 2012, respondent was supposed to wait for a period of 6 months before approaching the Tribunal. That the cause of action arose on 12th June 2014 and the period of limitation for filing the Original Application ended on 14th July 2014. The Original Application was filed on 26th February 2016. On these pleadings, condonation of delay was sought. By order passed on 27th February 2017, the Tribunal condoned the delay in filing the Original Application. The State Government did not challenge the said order condoning the delay. Though not required, the Tribunal has once again considered the issue of delay while deciding the Original Application and has recorded following findings in the judgment under challenge:

“19. The learned P.O. sought to contend that the Applicant is guilty of laches, as she remained silent for the period of four years, and therefore, she is not entitled to the discretionary relief on the principle laid down by Hon'ble Supreme Court in **Arvind Kumar Srivastava's** case (cited supra). Indeed, the Hon'ble Supreme Court held that the principle of parity is the subject to the exception where the employee is guilty of laches or for delay in approaching the judicial forum. In this behalf, the Applicant contends that she had firstly made representation on 14.12. (Page 55-A of P.B.) but it was not responded. Whereas, the Respondents categorically denied the receipt of representation dated 14.12.2012. True, the Applicant could not produce the acknowledgment of representation dated 14.12.2012. However, fact remains that, thereafter also, she had made representations on 01.04.2015 and 27.04.2015 (Page Nos.120 and 122 of P.B. which are not disputed) after the decision in **Sachin Dawale's** case. The Applicant's explanation that she was expecting remedial measures from the Respondents themselves cannot be brushed aside. She had legitimate expectation that she will be treated alike. In fact, as per the principle laid down by Hon'ble Supreme Court In **Arvind Kumar Srivastava's** case where the judgment pronounced by the Court is a Judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not, with such a pronouncement, the obligation-is cast upon the executives to itself extend the benefit thereof to all similarly situated persons. True, in the present case, the Judgment in **Sachin Dawale's** case cannot be termed as the judgment in rem, but one should not be oblivious of the fact that later, on the basis of Judgment in **Sachin Dawale's** case itself, the Government had extended the benefit of absorption to 317 Lecturers by G.R. dated 13.03.2015 who are similarly situated. This being the position, now the Applicant cannot be left out and deprived of from the benefit of the said Judgment, particularly when, her services were found terminated illegally.

20. As such, this is not a case where the Applicant can be said guilty for lapses or she had acquiesced. In order to see whether the Applicant is guilty of laches, one need to consider whether there is acquiescence on the part of Applicant and whether there is any change of position that has occurred on the Respondents' part. in view of representations dated 01.04.2015 and 27.04.2015 (which are not disputed by the Respondents) it cannot be said that she has acquiesced or relinquished her claim of absorption. It is in this context, the M.A. for condonation of delay was filed which was allowed by the Tribunal. Therefore, the alleged lapses or delay

in filing O.A. cannot be the ground to deny the benefit of absorption to the Applicant, particularly when her services were terminated illegally. This injustice now needs to be undone by issuing appropriate direction.”

24. The Tribunal has exercised its discretion in condoning the delay. We are not expected to sit in appeal over such discretion exercised by the Tribunal. In this regard the judgment in **N. Balkrushnan** (supra) relied upon by Ms. Talekar is apposite. In paragraph 9 and 14 of the judgment, the Apex Court has held as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

14. In this case, explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising revisional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs fifty thousand from the delinquent-advocate through the Consumer Disputes Redressal Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that the appellant shall pay a sum of rupees then

thousand to the respondent (or deposit it in this Court) within one month from this date.”

25. Even otherwise, we are fully satisfied that the delay in filing the Original Application deserved to be condoned considering the facts and circumstances of the present Case. Respondent was not terminated, but merely relieved and expressed surprise for non-issuance of transfer order in pursuance of relieving order dated 14th December 2012. Her case was under consideration by petitioners when the entire records were summoned by the Director from Principal, Government Polytechnic, Solapur vide letter dated 23rd March 2015. Her request was finally rejected by order dated 13th October 2015. The State Government did not challenge the order passed by the Tribunal on 27th September 2017 allowing the Miscellaneous Application No.359 of 2017 by condoning the delay. That order is not under challenge even in the present petition. In absence of challenge to the order dated 27th September 2017, we otherwise cannot set aside the same. Therefore, the objection of the State Government about delay in filing Original Application challenging order of termination as well as the objection of acquiescence in the termination order are repelled. The relieving order, which has resulted in Respondent's termination has rightly been set aside by the Tribunal.

26. Now turning to the issue of absorption in services, there is no denial to the fact that respondent's cohorts have already been regularized in service. Every contract lecturer appointed alongwith respondent by order dated 5th November 2007 (who continued to

work) came to be regularized in services, even though they were not petitioners in **Sachin Dawale**. The State Government firstly regularized the petitioners in *Sachin Dawale* by issuing Government Resolution dated 14th January 2015. Subsequently by Government Resolution dated 13th March 2015, as many as 317 contract lecturers came to be regularized in services from the dates of their initial appointments. The Government Resolution dated 13th March 2013 includes name of Shri. N. C. Bulla who has been regularized in service w.e.f. 15th January 2008. Thus, if the respondent was not to be relieved / terminated on 7th September 2012, she would have also been regularized in service w.e.f. the date of her initial engagement. We have already held the order dated 7th September 2012 relieving the respondent from service to be illegal. This would mean that the respondent would continue in service as on 18th March 2015 when services of 317 similarly placed contract lecturers came to be regularized. But for her veiled termination, Respondent would have been regularized in service. Since termination is set aside, regularization would be automatic in the peculiar facts of the case. We therefore have no hesitation in holding that the respondent is also entitled to be regularized in service w.e.f. her date of initial engagement. The issue of extension of benefit of a judgment to similarly situated persons and condonation of delay in approaching tribunal to seek similar benefits has been dealt with by Constitution Bench judgment in **K.C. Sharma v. Union of India**, (1997) 6 SCC 721. It is held:

4. The validity of the retrospective amendments introduced by the impugned notifications dated 5-12-1988 had been considered by the Full Bench of the Tribunal in its judgment in C.R. Rangadhamaiah v. Chairman, Rly. Board [(1994) 27 ATC 129] and connected matters and the said notifications insofar as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (OA No. 774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.

5. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in Chairman, Rly. Board v. C.R. Rangadhamaiah [(1997) 6 SCC 623] and connected matters decided today.

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in OAs Nos. 395-403 of 1993 and connected matters. No order as to costs.

(emphasis ours)

27. In **Arvind Kumar Shrivastav** (supra) the Apex Court has held as under :

“**22.3** however, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see *K.C.Sharma v. union of India*). On the other hand, if the judgment of the court was in *personam* holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

28. We are of the view that the Tribunal has not committed any error either in setting aside the order relieving the respondent from service or directing her regularization.

29. What remains now is to deal with the judgments cited by Mr. Acharrya:

i) The judgment of the Constitution Bench in **Umadevi** marks a watershed moment in the development of law relating regularization of services. In paragraph 43 of the judgment the Apex Court has held as under:-

“**43.** Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution.

Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, 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. It has also to be clarified 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. 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. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

The sound exposition of law by the Apex Court in *Umadevi* now renders regularization of casual, ad hoc, temporary or contractual employees impermissible even if they may have rendered long years of service. Only a one time exception is carved out in *Umadevi* for regularization of irregularly appointed employees completing 10 years of service. Thus, applying the ratio of *Umadevi*, Respondent would have no semblance of right for regularization of her services. However, linked with the issue of her regularization is the issue of her termination. It is common ground that but for her termination, her name would have been included in the GR dated 13th March 2015. Not only all her colleagues but also her junior counterpart in the same college Shri. N. C. Bulla has been regularized vide GR dated 13th March 2015. The Tribunal has set aside her termination and we haven't not found any fault in that direction. Therefore, once the termination is set aside, regularization is automatic, in view of peculiar facts and circumstances of the case.

Also, as observed above, the judgment in *Umadevi* has been considered in *Sachin Dawale* and it is held as under:

“17. The submission on behalf of the respondents relying on the judgment of Secretary, State of Karnataka & Ors. V/s. Umadevi & Ors. (supra) cannot be accepted in the facts of the present case. In above case, the Hon'ble Supreme Court has observed in paragraph 3 of the judgment that the States have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure

through the Public Service Commission "or otherwise as per the rules adopted" and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to 35 wp2046.10 compete for the post. The Hon'ble Supreme Court has observed that Courts should desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. In the present case though the petitioners are not selected through MPSC, it is undisputed that the petitioners are selected after the procedure for selection is followed and through the duly constituted Selection Committee as constituted by the Government of Maharashtra. The advertisement was issued before the petitioners were selected and all interested candidates had applied for the posts for which the petitioners are selected. Thus, it cannot be said that the petitioners have got the employment through back door entry. It cannot be said that the candidates qualified for the posts were deprived of the opportunity to compete for the selection for the posts in which the petitioners are working."

- ii) Subsequent Order of the Division Bench dated 27th April 2017 clarifying the judgment in **Sachin Dawale** is relied upon. Relevant portion of the Order reads thus -

"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 regularization. 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 regularization of their services."

The clarificatory order was passed by the same Division Bench to prevent regularization claims contrary to law laid down in *Umadevi*. In ***Sachin Dawale***, this Court has dealt with a peculiar case where conscious decision was taken by the State Government to resort to contractual appointments on account of ban on regular recruitment through MPSC. There is no denial to the fact that Petitioner is identically situated to Petitioners in ***Sachin Dawale***. So also the contractual employees regularized vide Government Resolution dated 13th March 2015. We are conscious of the fact that post ***Umadevi***, regularization of services of an employee who has not put on 10 years of service on a vacant sanctioned post is not permissible. However, on account of the fact that the respondent was erroneously terminated, she missed the bus of regularization when her colleagues (both Petitioners and non-Petitioners in *Sachin Dawale*) got regularized. In the present case, respondent is denied similar treatment on par with her colleagues and more particularly her junior counterpart Shri. S. C. Bulla, who was not only continued in service (though junior most), but also absorbed. We are dealing with peculiar facts where the respondent was erroneously relieved from services on 7th September 2012 (which later turned out to be her termination) while continuing her junior counterpart. Her termination is found to be erroneous with the result she had right to continue as contractual lecturer up to 13th March 2015 when the Government Resolution was issued regularizing 317 contract lecturers. It is

common ground that if the respondent was to continue in service as on 13th March 2015, her name would have been included in that Government Resolution thereby absorbing her in services from the date of her initial appointment. It is purely on account of this sole factor that we would make an exception in case of Respondent by not interfering with the Tribunal's order.

iii) The judgment of this court in ***Lalita Mertia*** (supra) relates to regularisation claim of a contract Trademark Examiner who had put in more than 10 years of contract service. Division Bench of this Court has held that regularisation of irregular appointments is a one time exercise for those who had put in 10 years of service on the date of *Umadevi* judgment. In the present case Petitioner has not put in 10 years of service, much less on the cut off date of *Umadevi* judgment. We are in agreement with the law elucidated by the Division Bench of this Court in *Lalita Mertia*. However present case involves unique circumstances as indicated above. It is Respondent's termination/ relieving order which is the main grievance and the claim for regularisation is, more or less, consequential. By directing Respondent's reinstatement w.e.f. the date of her termination, she is being put on par with her cohorts. Her claim for regularisation flows out of her right of being treated equally, especially on par with her junior counterpart Mr. Bulla, who is already regularised. Considering the unique facts and circumstances of the case, the

ratio of judgment in ***Lalita Mertia*** would be inapplicable in the case before us.

iv) ***Ganesh Digamber Jambhrunkar*** (supra) is delivered by Division Bench of this Court, to which one of us (*Sandeep V. Marne J.*) is a party. This court followed the judgement in *Lalita Mertia* and distinguished *Sachin Dawale*. However, the facts in that case are clearly distinguishable. The contractual appointments in that case were not in a Government College, but in a private college which was granted administrative, financial and managerial autonomy under Sub Sector Development Programme for Technical Education/Technical Education Policy Improvement Programme of Government of India. This Court held that the appointments of Petitioners therein were not against sanctioned posts. Thus, facts in ***Ganesh Digamber Jambhrunkar*** are clearly distinguishable.

v) ***Chandra Sekhar Mishra*** (supra) is relied upon in support of the contention that the Tribunal could not have entertained the Original Application filed beyond the period of limitation and that the contract employee cannot be regularized. The facts are however clearly distinguishable. In that case, termination effected on 31st January 1978 was questioned by the respondent therein by filing Original Application in the year 1992. It is not clear whether the Tribunal had condoned the delay in filing Original Application, as is done in the present case.

Furthermore, the delay in that case was inordinate, which is not the case here. So far as the issue of regularization is concerned, the present case would be governed by the judgment of this court in the case of **Sachin Dawale** passed in the case of colleagues of the respondent.

vi) **Anita** (supra) is relied upon in support of the contention once the contractual appointments are accepted, the employees are estopped from challenging nature of appointments. The facts in the case are clearly distinguishable. In that case, 471 posts of Legal Advisor, Law Officers and Law Instructors were created to be filled up purely on contractual basis. As against this, in the present case the contractual appointments were resorted against regularly sanctioned posts in view of ban on regular recruitment. In case before the Supreme Court, on expiry of the term of contractual appointments, the appointees were subject to fresh selection process, which is not the case here. Though the Tribunal rejected the relief of regularization, the High Court held that 471 posts created were of permanent nature. The Apex Court held that when the posts were created on contractual basis, the High Court could not have interfered with the policy decision by holding that the appointments are permanent in nature. The appointees had executed agreements which are taken into consideration by the Apex Court to record a finding

that the appointees were bound by the terms of agreement. Thus, the facts in **Anita** (supra) are clearly distinguishable.

30) As observed above, we are inclined to uphold Tribunal's order directing Respondent's regularisation only on account of the peculiar facts and circumstances of the present case. This judgment therefore shall not be construed to mean that employees can claim regularisation *de horse* the law expounded by the Apex Court in **Umadevi**.

31) Resultantly we do not find any error in the judgment and order passed by the Tribunal. Petitioners shall comply with the directions of the Tribunal within a period of 4 weeks from today. Writ Petition is accordingly dismissed. Rule is discharged. There shall be no order as to costs.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ