



2023:DHC:9017



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 15th December, 2023**

+ **W.P.(C) 5929/2021, CM APPL. 18702/2021, CM APPL. 45446/2021
& CM APPL. 13837/2022**

RENU DALAL AND ORS Petitioners

Through: **Mr.Kartik Dabas, Advocate (Through
VC)**

versus

GOVERNMENT OF NCT OF DELHI Respondent

Through: **Mrs.Avnish Ahlawat, Standing
Counsel for GNCTD with Mr.Nitesh
K.Singh, Ms.Laavanya Kaushik,
Ms.Aliza Alam and Mr.Mohnish
Sehrawat, Advocates for GNCTD**

**CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed under Article 226 of the Constitution of India on behalf of the petitioners seeking the following reliefs:-

“A. To issue appropriate direction and restricting respondents from going ahead with the selection process initiated vide impugned Advertisement No. 23/2017 and inviting the online



application for the vacancy No. 7 (Vacancy No. 17122307509) for Five Assistant Professor (Technical) (Computer Science and Engineering) and Vacancy No. 8 (Vacancy No. 17122308509) for Seven Assistant Professor (Technical)(ECE);

B. To direct the respondents to regularize the Services of the Petitioners as per the legislative intent of GNCT Delhi, as also directions of the Hon Apex. Court in SLP No 39014/2013 State of Maharashtra and Anr VS Sachin Ambadas Dawle and Others, Civil Appeal No. 7423/2018 Narendra Kumar Tiwari and Others VS State of Jharkhand, W.P. (C) 6798/2002 Sonia Gandhi and Ors. vs. Govt. of NCT of Delhi and Ors, State of Gujarat v. PWD Employees Union reported in (2013) 12 SCC 417, P Rajesh and Ors. v. Karnataka Power Transmission Corporation Ltd. reported in 2016 (2) AKR 41 and many others.

C. Pass an ex-parte ad-interim direction restraining the Respondents from discontinuing the services of the Petitioners in light of existing vacancy and need for classes.

D. To issue appropriate direction to the Respondents including the Respondent No.4 to not discontinue the contract of service/employment of the Petitioners, which is coming to an end on 09.06.2021; during COVID pandemic and during the pendency of their case before the Central Administrative Tribunal/now to be transferred to this court on account of jurisdiction change;

E. To pass appropriate direction to the respondents to immediately release their pending salaries of the last three months, and to not stop their salaries while they are working and providing their services;

F. Pass any such other and further orders as this Hon'ble Court may deem fit and proper.”



FACTUAL MATRIX

2. In July 1983, Government of India established an engineering college which was registered as a Society under the Societies Registration Act No. XXI of 1860 (Registration No. S-17742 of 1987), in the name of Delhi Institute of Technology. The Institute has been and is affiliated to University of Delhi for all its Under Graduate, Post Graduate and Ph.D programs having independent administrative autonomy. The above said institute was later renamed as “Netaji Subhas Institute of Technology” (hereinafter “NSUT”) in the year 1997, vide Gazette notification No. D.L. 3302/97 dated 20th February 1997.

3. Between the years 2010 to 2013, the petitioners were appointed as Assistant Professors in Group A positions on contractual basis, teaching various engineering subjects like Computer Engineering, Electronics and Communications at the Ambedkar Institute of Advanced Communication Technologies and Research, Geeta Colony, Delhi (now known as east campus of NSIT).

4. During the period of 2013-2017, the respondents kept on recruiting new candidates for the same post on contractual basis and simultaneously started the process of recruiting candidates on permanent positions through Union Public Service Commission recruitment process vide Advertisement No. 23/2017.

5. Aggrieved by the same, the petitioners preferred an Original Application bearing OA no. 4571/2017, before the learned Central Administrative Tribunal (hereinafter “CAT”), wherein the petitioners



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challenged the Advertisement No. 23/2017, by virtue of which the respondents, i.e., the Ambedkar Institute of Advanced Communication Technologies and Research, Directorate of Training and Technical Education, Government of NCT of Delhi (hereinafter “GNCTD”) invited online applications for the vacancy of five assistant professors (Technical) (Computer Science and Engineering) and for Seven Assistant Professors (Technical) (ECE).

6. The afore said application against the impugned Advertisement was filed to regularize the petitioners since they were eligible for the vacancy as and were professors, already teaching Electronics and Computer Science in the respondent college for the last 7.5 to 8.5 years (except Prof. Bajpayee, one of the petitioners, who is a director of Physical Education with 10.5 years of service with the respondent university).

7. During the period of 2018-2020, the respondent university continuously renewed the employment contracts of the petitioners to continue in there following positions wherein the last renewal took place w.e.f. 20th August 2020, to 9th June 2021.

8. In 2020, the Government of NCT of Delhi, incorporated the Ambedkar Institute of Advanced Communication Technologies and Research, Geeta Colony Delhi as the East Campus and Ch. Brahm Prakash Government Engineering College, Jaffarpur as the West Campus of NSUT.

9. The petitioners were informed that their contracts would not be renewed and consequently, their services came to an end. Being aggrieved by the same, the petitioners approached the Predecessor Bench of this Court



in W.P (C) no. 5878/2021, and the same was dismissed as withdrawn vide order dated 4th June 2021. Subsequently, the petitioners withdrew their OA no. 4571/2017 and accordingly, filed the instant writ petition seeking regularization of their services and directions against the respondent to not to proceed with the impugned advertisement mentioned herein above.

SUBMISSIONS

(On behalf of the petitioners)

10. Learned counsel appearing on behalf of the petitioners submitted that the action of the respondents is bad in law and the same is also contrary to the settled legal principle which makes it liable to be set aside by this Court.

11. It is submitted that the conduct of the respondents has deprived the petitioners of their livelihood and employment to which they are entitled to by the Constitution of India, and any violation *qua* the same is not permissible under the law.

12. It is submitted by the petitioners that they joined the services through a rigorous, transparent selection process in accordance with the Recruitment Rules for the vacant and sanctioned posts, and the process of selection meets the criteria for regularization.

13. It is submitted that the petitioners fulfilled all the qualifications and eligibility conditions i.e. educational qualifications and experience and have been performing the same work for the last 7.5 to 8.5 years.

14. It is submitted that nowhere it is prescribed that the recruitment is to take place only through or by the Union Public Service Commission



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(hereinafter UPSC”) and it is even prescribed in the Recruitment Rules that prior consultation of UPSC is required and thus, cannot be taken a ground to deny regularization of the petitioners. In this context, the learned counsel for the petitioners relied on the judgment passed in ***Union Public Service Commission v. Akshay Bahadur*, 2013 SCC OnLine Del 4303**, vide which 550 contractual doctors of GNCTD were provided regularization by conducting simple interviews much after the initial recruitment on contract.

15. It is submitted that in the case of ***Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.* AIR 2006 SC 1806 (1)**, the issue was related to the regularization of highly qualified engineering professors and the Hon’ble Supreme Court directed the government to desist from such unfair practices and exploitation of staff. Furthermore, in the case of ***Sonia Gandhi v. Govt. of NCT of Delhi*, 2013 SCC OnLine Del 4419**, the Division Bench of this Court held that a person is entitled to regularization in service, when his appointment is made in accordance with the Recruitment Rules. Thus, the decision of GNCTD to continue the contractual employment of the petitioners should be stopped as the same is used to the disadvantage of the petitioners during the current pandemic.

16. It is further submitted that in the judgment of ***Sonia Gandhi (Supra)***, it has been further held that long-term contractual employment is a fraud being played on the employees and exploitation by the government, and provided directions for a one-time regularization for all its contractual employees. It is submitted that the decision rendered thereto, is applicable to



the facts of the instant case, and accordingly, the decision may be passed in favour of the present petitioners.

17. It is submitted that the petitioners have a fundamental right of fair and equal treatment in the matter of employment by virtue of which they should be appointed/absorbed on regular basis and till then, their services in the present status ought to be continued without any potential threat of disengagement.

18. It is submitted that the State as a model employer in a welfare state is not expected to take advantage of its position and impose wholly inequitable and unreasonable condition of employment on the prospective employees, who do not have the choice but to accept the appointment on terms and conditions stipulated by the employer.

19. It is submitted that the respondents being the State and a model employer is unjustified in exploiting the services of the petitioners in the prime years of their employment. The same being a settled law, thus the current position of the GNCTD is contrary to the legal principles and hence, may not be allowed.

20. It is further submitted that non-renewal of the employment contract of the petitioners would endanger the fundamental rights of life and health of the petitioners during the period of pandemic. Furthermore, it is unfair and unconstitutional to withhold 3 months of salary of the petitioners without any due cause.

21. It is submitted that there are still positions which are vacant and sanctioned by the UPSC, and the petitioners have been performing their



duties diligently, to the satisfaction of their seniors continuously and that they hold all the requisite qualifications and experience.

22. It is submitted that the vacancies advertised in the notification Advertisement No. 23/2017, are bad in law and a waste of public exchequer as the same would amount to replacement of experienced professors with inexperienced professors.

23. It is submitted that in view of the foregoing submissions, the instant petition may be allowed and the reliefs as prayed for may be granted.

(On behalf of the respondents)

24. Learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the same is liable to be dismissed being devoid of any merits.

25. It is submitted that the respondent's conduct is in accordance with the law and the petitioners have not been able to prove by any material evidence that any of their fundamental or legal rights have been infringed upon by the respondents.

26. It is submitted that the challenge to the Advertisement No. 23/17, is misconceived and is liable to be rejected on the principle of *Res-judicata*, since the same was challenged by the petitioners in O.A. No. 4571/2017, before the learned CAT which had been unconditionally dismissed as withdrawn. Furthermore, the selection of the candidates as per the Advertisement issued by UPSC has already been concluded and the selected candidates have already joined or are in the process of joining.



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27. It is submitted that the petitioners were appointed on contractual basis by the Ambedkar Institute of Advanced Communication, Technology Research, Geeta Colony and not by Netaji Subhash University of Technology through walk-in-interview without following the due process of selection for the Group-A posts in UPSC and the petitioners have not disclosed whether they participated in the UPSC selection process under Advertisement No. 23/17.

28. It is submitted that the terms and conditions of contractual appointment of the petitioners clearly stipulate that their appointment will be from 1st March 2016, to 30th June 2016, or till the post is filled on regular basis through UPSC whichever is earlier. In case required, the Government reserves the sole right of considering an extension of contract beyond the above said period.

29. It is also submitted that under the said terms of appointment of the petitioners, it was further stipulated therein that the appointment can be terminated by the Government by giving one month notice or giving one month salary, without assigning any reason. Also, the appointee shall not be entitled to any benefit of provident fund, pension, gratuity, medical attendance and treatment or any other benefits available to government servants, appointed on regular basis.

30. It is submitted that during their initial appointment, the petitioners were further informed under the head of the terms and conditions of appointment that their appointment will not confer on the appointee any right or claim for regular appointment to the post. Further, the appointment



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shall be strictly on contract basis only and appointee will not be regularized in any case.

31. It is submitted that the appointment letters of the petitioners were issued by the Ambedkar Institute of Advanced Communication, Technology Research, Geeta Colony, and the same clearly reveals that they are appointed on contractual basis up to 28th February 2013, or till such time the posts are filled-up through regular basis by UPSC whichever is earlier. This includes the post of Director Physical Education also.

32. It is submitted that while keeping in mind the welfare of the students, the improvement in progress performance of the institute was the major intent of the Government for the merger of Ambedkar Institute of Advanced Communication, Technology Research, Geeta Colony and Ch. Brahm Prakash Government Engineering College Jaffarpur, Delhi, with the NSUT,

33. It is also submitted that it was imperative that the responsibility of selection of the staff vests with the NSUT since it is tasked with imparting knowledge and training, ultimately taking the institute to higher ranks in terms of education level.

34. It is further submitted that vide the order passed by GNCTD on 22nd December 2010, the petitioners were completely aware of the fact that the contractual employees of the two institutions merged with NSUT, will continue only till completion of their existing contract period and the Registrar University informed the petitioners, vide order dated 30th December 2020, that the contract employees will not be eligible for further continuation in NSUT on the strength of their services in erstwhile



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Ambedkar Institute of Advanced Communication, Technology Research, Geeta Colony and Ch. Brahm Prakash Government Engineering Jaffarpur.

35. It is submitted that NSUT has taken steps to fill-up the posts on regular basis by conduction fresh regular recruitment during this period where four of the petitioners participated but failed.

36. It is submitted that the salary and allowances have been duly paid to all the petitioners.

37. It is submitted that the judgment in *Sonia Gandhi (Supra)* is not relevant to the facts of the instant case and the appointments made earlier by the Institute were through walk-in-interviews as an interim stop-gap arrangement only.

38. It is submitted that the entire Group-A posts of Central Government/Union Territory and autonomous bodies functioning under GNCTD are filled through UPSC only, and the judgment referred by the petitioners in *Dr. Akshay Bahadur (Supra)* with respect to the doctors is not relevant in the instant case.

39. It is submitted that the AICTE norms are required to be followed in the Technical Institutions/Universities and it is clearly stipulated that the recruitment to all cadre posts shall be strictly based on merit by open selection through open advertisement at National level. Any exemption would compromise all excellence of teaching standards and hence there is no scope to seek regularization by the contractual employees.

40. It is submitted that the judgment passed by this in the case of *Keshav Dutt v. Delhi Tourism & Transport Development Corporation Limited*,



2015 SCC OnLine Del 8592, leaves no iota of doubt that unless the four essential ingredients exist, the appointments cannot be termed as regular employment and the four essential ingredients are; existing sanctioned posts, vacancies existing in such sanctioned posts, eligibility criteria being fulfilled by the candidates as specified in the recruitment rules or other applicable guidelines/circular, and inviting applications by way of advertisements and through employment exchange.

41. It is further submitted that the petitioners were appointed pursuant to such advertisement which was not for appointments on permanent basis and the petitioners were to be appointed only for contractual basis, therefore they cannot seek regularization.

42. In view of the submissions made above, it is submitted that the instant writ petition is devoid of any merit and the same be dismissed with exemplary costs.

ANALYSIS AND FINDINGS

43. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

44. The petitioners by way of the present writ petition are seeking regularization of their services. It has been submitted on behalf of the petitioners that in the during the period of 2010 to 2013, they were appointed



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as Assistant Professors in Group A positions on contractual basis, teaching various engineering subjects at the Ambedkar Institute of Advanced Communication Technologies and Research, Geeta Colony, Delhi.

45. Thereafter, the respondent university issued Advertisement No. 23/2017, whereby, they started the process of recruiting candidates on permanent positions through Union Public Service Commission recruitment process. Aggrieved by the same, the petitioners preferred an Original Application bearing OA no. 4571/2017, before the CAT, challenging the above said advertisement. The said application was filed against the impugned advertisement alleging that the respondents have failed to regularize the petitioners even though they are eligible for the vacancy notified in the aforementioned advertisement. The case of the petitioners is that they were professors already tasked with teaching Electronics and Computer Science in the respondent college for the last 7.5 to 8.5 years, and hence they carry requisite qualifications for appointment on permanent positions.

46. The contracts of the petitioners were renewed from time to time and the last renewal was for the period of 20th August 2020, to 9th June 2021, pursuant to which, they were informed that their contract will not be renewed any further. The petitioners, being aggrieved by above approached this Court in W.P (C) no. 5878/2021, which was dismissed as withdrawn vide order dated 4th June 2021.

47. Subsequently, the petitioners also withdrew OA no. 4571/2017 pending before the CAT, and have finally approached this Court under its



writ jurisdiction seeking regularization of their services and directions against the respondent to not to proceed with the impugned advertisement mentioned herein above.

48. It has been submitted by the petitioners that the impugned advertisement is bad in law, and that the petitioners are entitled to be regularized at the positions notified under the advertisement. It has been further contended that they joined the services through recruitment process and that their recruitment is in consonance with the Recruitment Rules. Moreover, it has been asserted on behalf of the petitioners that they are eligible to be appointed permanently since they meet the criteria for regularization as they hold years of experience of teaching at the respondent university. The petitioners during the course of their arguments have relied upon the judgment passed in *Akshay Bahadur (Supra)*, *Umadevi (Supra)* and *Sonia Gandhi (Supra)*.

49. In rival submissions the learned counsel appearing on behalf of the respondents has vehemently opposed the instant writ petition submitting to the effect that the petitioners do not hold any inherent or vested right to be appointed or for their job posts to be regularized since it was clearly stipulated in their terms and conditions of appointment that their appointment will not confer on the appointee any right or claim for regular appointment to the post. Further, the appointment shall be strictly on contract basis only and appointee will not be regularized in any case. The respondents have heavily relied upon the said terms and conditions of appointment issued to the petitioners, thereby, stating that their appointment can be terminated by



giving one months' notice or giving one month salary, without assigning any reason. Furthermore, the terms explicitly state that an appointee shall not be entitled to any benefit of provident fund, pension, gratuity, medical attendance and treatment or any other benefits available to government servants appointed on regular basis. The petitioners were appointed pursuant to such advertisement which was not for appointment on permanent basis and only on contractual basis, therefore they cannot seek regularization

50. The respondents have further submitted that the selection process has concluded and no relief can be sought against the said recruitment process since the candidates who participated therein, have already joined their positions. It has been submitted that the conduct of respondents is as per the mandate of law and in consonance with the guidelines established by the Hon'ble Supreme Court and this Court in a catena of judgments. Further, the petitioners have not been able to produce any evidence which could infer that any of their fundamental or legal rights have been infringed upon by the respondents.

51. It has also been contended by respondents that the petitioners were appointed through walk-in-interview and the same is contrary to the process of recruitment for selection to the Group-A posts and that the petitioners have not disclosed whether they participated in the UPSC selection process under Advertisement No. 23/17. It has been submitted that *Sonia Gandhi (Supra)* is not applicable to the facts of the instant case since a review application was filed in the said writ, wherein, it was clarified by this Court that directions in that matter are only relatable to para-medicos working on



contract in Hospitals and Institutions established by the GNCTD. During the course of arguments the respondents have relied on the judgment passed in the matter of ***Keshav Dutt (Supra), Ish Rani v. Union of India, 2017 SCC OnLine Del 7675*** and ***Kumar Mayank v. Delhi Technological University, 2016 SCC OnLine Del 5882***.

52. Since the facts have been reiterated in the preceding paragraphs, therefore, at this stage, it is only prudent to discuss and visit the position of law *qua* the scheme of regularization which will decide the issue raised in the present writ petition, i.e., the entitlement of the petitioners to seek regularization.

53. The law with respect to the principle of regularization of services of the employees who are/were working on contractual basis has been settled by the Hon'ble Supreme Court and this Court in a catena of judgments.

54. The Hon'ble Supreme Court in the case of ***State of Karnataka v. Umadevi (3), (2006) 4 SCC 1***, laid down the guidelines with regard to the scheme of regularization and in what manner, and what circumstances the regularization of an employee is to be considered. It observed as under:

“4.It is time, that Courts 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. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are



not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment.

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15. Even at the threshold, it is necessary to keep in mind the distinction between regularisation and conferment of permanence in service jurisprudence. In State of Mysore v. S.V. Narayanappa¹¹ this Court stated that it was a misconception to consider that regularisation meant permanence. In R.N. Nanjundappa v. T. Thimmiah¹² this Court dealt with an argument that regularisation would mean conferring the quality of permanence on the appointment. This Court stated: (SCC pp. 416-17, para 26)

"Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

16. In B.N. Nagarajan v. State of Karnataka this Court clearly held that the words "regular" or "regularisation" do not



connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This Court emphasised that when rules framed under Article 309 of the Constitution are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognised therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised and that it alone can be regularised and granting permanence of employment is a totally different concept and cannot be equated with regularisation.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the court, in appropriate cases, would have only the right to regularise an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.”

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43.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.....

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53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date....”

55. From the perusal of the above, it is evident that the principle regarding the entitlement to a regularized position is not *per se* an inherent right. This Court has to stay cautious, wherein, it cannot be swayed by the fact that the employee/person seeking regularization has worked for a considerable



amount of time. It is not as if the person who accepts an engagement either temporary or casual or contractual in nature, is not aware of the nature of his employment.

56. The Hon'ble Supreme Court in the judgment of ***State of Karnataka v. M.L. Kesari***, (2010) 9 SCC 247, while reiterating the principles of ***Uma Devi (3) (Supra)***, held as under:

“5. The decision in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1] was rendered on 10-4-2006. In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and the courts cannot direct their absorption, regularisation or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that 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, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates.

6. This Court in Umadevi (3) [(2006) 4 SCC 1] further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below: (SCC p. 42, para 53)....

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal



appointments) as explained in S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, AIR 1967 SC 1071 : (1967) 1 SCR 128] , R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date.”

(emphasis in original)

7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Umadevi (3) [(2006) 4 SCC 1] , if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and



continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

57. The said principle has also been observed by the Hon’ble Supreme Court in the matter of ***Official Liquidator v. Dayanand, (2008) 10 SCC 1*** :

“49.subject to which the respondents were employed/engaged by the Official Liquidators but from the tenor of the pleadings and other records, it can be safely inferred that the respondents were appointed on purely temporary basis for fixed period with a stipulation that they shall not be entitled to seek regularization or absorption in the regular cadre against the sanctioned post. Those who applied in response to the advertisements issued by the Official Liquidators must have been aware of the fact that they were being engaged/employed pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules in connection with liquidation proceedings; that their appointments will not be against the posts sanctioned by the Government; that they will have no right to claim absorption in the regular cadre and that they will be paid salaries and allowances which may be fixed by the Court. They must have accepted the appointment/engagement knowing fully well that they will have fixed tenure without any right to continue in service or to seek absorption against the sanctioned posts.



50. Therefore, they cannot be heard to complain of the violation of Articles 14 and 16 of the Constitution on the ground that even after having worked for more than one decade, they have not been absorbed in the regular cadres under the Government. In our opinion, after having applied for and accepted employment/engagement as company paid staff with fixed tenure superimposed by a stipulation that they will have no right to continue in service or to be absorbed in the regular cadres, the respondents are estopped from seeking a direction for their absorption against the posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.

51. Therefore, they cannot be heard to complain of the violation of Articles 14 and 16 of the Constitution on the ground that even after having worked for more than one decade, they have not been absorbed in the regular cadres under the Government. In our opinion, after having applied for and accepted employment/engagement as company paid staff with fixed tenure superimposed by a stipulation that they will have no right to continue in service or to be absorbed in the regular cadres, the respondents are estopped from seeking a direction for their absorption against the posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.”

58. Recently, the Hon’ble Supreme Court in the judgment of **Ganesh Digamber Jambhrunkar v. State of Maharashtra, 2023 SCC OnLine SC 1417**, held that working continuously for a considerable period of time does not create any legal right in favour of the concerned employee, to be absorbed upon regular posts and such contentions thereto cannot be entertained. The relevant extracts of the same are as under:



“2. The petitioners were all appointed in Shri Guru Govind Singh Institute of Engineering and Technology on contractual basis and their appointments were made sometime in the year 2011. They are aggrieved as a regular recruitment process has started and we are apprised by learned counsel for the respondent-State that at present such process stands completed now but appointment letters are yet to be issued. The petitioners want to be regularized in the post for which such appointment process has been started and in this regard, learned counsel for the petitioners has relied on a judgment of this Court in the case of Sheo Narain Nagar v. State of Uttar Pradesh, (2018) 13 SCC 432. Paragraph ‘7’ of this judgment reads as under:

“7. When we consider the prevailing scenario, it is painful to note that the decision in Umadevi(3)4 has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily-wage basis, etc. in exploitative forms. This situation was not envisaged by Umadevi(3)4. The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi(3)4 has been ignored and conveniently overlooked by various State Governments/authorities. We regretfully make the observation that Umadevi(3)4 has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularising the services of incumbents. They are being



continued in service without payment of due salary for which they are entitled on the basis of Articles 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara v. Union of India⁸, from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits, etc. There is clear contravention of constitutional provisions and aspiration of downtrodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi(3)4. Thus, the time has come to stop the situation where Umadevi(3)4 can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas Umadevi(3)4 laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ad hoc basis or otherwise. This kind of action is not permissible when we consider the pith and substance of true spirit in Umadevi(3)4.”

3. The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.

4. We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has



created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken...”

59. It is deliberated that irregular appointments were to be regularized only as a one-time measure, as per the judgment passed by the Hon'ble Supreme Court in ***Uma Devi (Supra)*** and one-time measure, in context to the observations made by the Hon'ble Court in the said judgment, the same would mean that there cannot be any regularization of appointees who are irregularly appointed. Evidently, if the appointment is not through the means of inviting applications from the eligible candidates vide circulations/advertisements by way of conducting competition, ultimately ensuring fair practice of appointment, then such appointments cannot be regularized because even irregular appointments are in violation of recruitment rules, and it has already been established that there cannot be violation of recruitment rules post ***Uma Devi (Supra)***. Since non-advertisement of the post leads to denial of the opportunity to prospective candidates who may be interested in the concerned Government post.

60. A candidate should be drawn from the employment exchange and if no candidate is available, then some other method may be opted provided that it must be consistent with the requirements of Article 14 of the Constitution of India which should be followed by publishing notice in



appropriate manner for inviting such applications. Further, all those who apply in response thereto, should be considered fairly and in accordance with recruitment rules of the public authority.

61. Now adverting to the facts of the instant case.

62. The petitioner has relied upon a Circular issued by GNCTD, dated 19th October 2015, and has argued that as per this circular either the petitioners must be regularized or at least their experience of working with the respondent university must be considered for appointments to the posts as advertised which have to be made pursuant to the impugned advertisement. The above said Circular reads as under : -

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI
(SERVICES DEPARTMENT-BRANCH-IV)
7th LEVEL, B-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI-110002*

No. F.19(11)/2015/S.IV/1890-96

Dated : 19/10/2015

ORDER

The Government of National Capital Territory of Delhi has considered the issue of regularization of the Contractual employees working in various departments of Govt. of N.C.T of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No. 2223 dated 06.10.2015 : -

In line with the Uma Devi Judgment, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts : -



1. Every department should formulate a scheme to fill up all vacant posts.
2. Contractual employees working against these posts should be allowed to apply with following conditions : -

- (a) They should be given age relaxation.
 - (b) They should be given appropriate and adequate weightage of experience for that post in evaluation.
 - (c) Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.
3. Policy in para-2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest.

*Sd/-
(ANUPAMA CHAKRAVORTY)*

DY. SECRETARY (SERVICES)...”

63. Two issues arise with respect to the above quoted Circular which are *firstly*, whether the said circular allows regularization of contractual appointees in permanent posts and *secondly*, as to whether experience of persons who have been working in contractual posts should be considered as a factor for giving appointments to the persons in permanent posts/regular posts which are now advertised.



64. Upon perusal of the said circular in fact directs appointments in terms of the Constitution Bench judgment of the Hon'ble Supreme Court in *Umadevi's case (Supra)*. Therefore, this circular has to be read in accordance with the ratio of the judgment in *Umadevi's case (Supra)* and while giving a thorough reading to the said circular, this Court must ensure that the contents thereto cannot give effect to the rights of the parties to such extent that it is violative of the ratio of the aforementioned judgment as the same would tantamount to violative of settled legal principles. Therefore, on the basis of this circular, there cannot be regularization of persons who have been appointed only on contractual basis for a contractual period.

65. It is also to be understood that the eligibility required to be appointed on the vacant posts does not in any manner imply or talk about 'experience' as a criterion and in the event it does, the same would tantamount to discrimination among other applicants which would further amount to be violative of the settled law. There is no requirement in the eligibility criteria of such a post. For ready reference, the relevant portion of the impugned advertisement showing the eligibility criteria has been reproduced herein below:

"...5. (Vacancy No. 17122305509) Three Professor (Technical) (Computer Science and Engineering), Ambedkar Institute of Advanced Communication Technologies & Research, Directorate of Training & Technical Education, Govt of NCT of Delhi (UR-03). The post is suitable for Physically Challenged Persons viz. Orthopaedically Handicapped/ Locomotor Disability /Cerebral Palsy with



disability i.e. One leg affected (Right or Left) (OL) or One arm affected (Right or Left) (OA). The posts are temporary.

PAY SCALE: Rs. 37000-67000 (PB-4) + Rs. 10,000/- (Academic Grade Pay). General Central Service, Group 'A', Gazetted; Non-Ministerial. Age: 50 yrs.

QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL: Bachelor of Engineering/Bachelor of Technology and Master of Engineering/Master of Technology in Computer Science and Engineering with First Class or equivalent either in Bachelor of Engineering/Bachelor of Technology or Master of Engineering/Master of Technology and Ph.D. or equivalent in Computer Science and Engineering.

(B) EXPERIENCE: Minimum of ten years teaching/research/industrial experience out of which at least five years should be at the level of Associate Professor. Or minimum of thirteen years teaching and/or Research and/or Industry. In case of research experience, good academic record and books/research paper publications/Intellectual Property Right/Patent record shall required as deemed fit by the expert members of the selection committee. If the experience in industry is considered, the same shall be at managerial level equivalent to Associate Professor with active participation record in devising/designing, planning, executing, analyzing, quality control, innovating, training, technical books/ research paper publications/ Intellectual Property Right/ Patent etc as deemed fit by the expert members of the selection committee.

NOTE-I: If a Class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first class/division. If a Grade Point system is adopted the Cumulative Grade Point Average will be converted into equivalent marks as below:-

Grade point	Percentage of marks
6.25	55%



6.75	60%
7.25	65%
7.75	70%
8.25	75%

NOTE-II: Ph D shall be from a recognized University. **Note-III** Equivalence for PhD is based on publication of five International Journal Papers each journal having a cumulative impact index of not less than 2.0, with incumbent as the main author and all five publications being in the authors' area of specialization. **Note-IV:** For an incumbent Assistant Professor, experience at the level of Assistant Professor will be considered equivalent to experience at the level of Associate Professor, provided the incumbent Assistant Professor has acquired or acquires Ph.D degree in the relevant discipline.

Note-V: Experience at Diploma Institution is also considered equivalent to experience at degree level institutions at appropriate level and as applicable. However qualifications as above shall be mandatory. **Note-VI:** The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified. **Note-VII:** The Qualification regarding experience is relaxable at the discretion of the Union Public Service Commission, for reasons to be recorded in writing in the case of candidates belonging to Scheduled Castes or Scheduled Tribes, if at any stage of the selection the Union Public Service Commission is of the opinion that sufficient number of candidates from these communities possessing the requisite experience are not likely to be available to fill up the posts reserved for them.

Specialization for the post:

- a) Computer Science & Engineering/Computer Science & Systems Engineering /Software Engineering/Computer Engineering



- b) Information Security /Information Security & Management /Computer Networks/ Internet Security/ Network Management.
- c) Information Systems/Distributed Systems/Real Time Systems/Data Warehousing and Data Mining.
- d) Information Technology and Applications /Computer Technology/Information Technology.

DESIRABLE: Post Ph.D. publications and guiding Ph.D. students. **DUTIES:** Teaching. research/consultancy projects & guidance to UG/PG students. To develop and upgrade Laboratories as per latest technology, represent institute in technical meets. To perform work related to the affiliating Universities and to assist the principal in academic & co-curricular activities and other allied duties. **HQ:** Department of Training & Technical Education, Govt. of NCT of Delhi.

6. (Vacancy No. 17122306509) One Associate Professor (Technical) (Computer Science and Engineering), Ambedkar Institute of Advanced Communication Technologies & Research, Directorate of Training & Technical Education, Govt of NCT of Delhi (ST-01). The post is suitable for Physically Challenged Persons viz. Orthopaedically Handicapped/ Locomotor Disability /Cerebral Palsy with disability i.e. One leg affected (Right or Left) (OL) or One arm affected (Right or Left) (OA). The post is temporary. **PAY SCALE:** Rs. 37400 - 67000 (PB-4) + Rs. 9, 000/- (Academic Grade Pay). General Central Service, Group 'A', Gazetted; Non-Ministerial. Age: 55* yrs. **QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL:** Bachelor of Engineering/Bachelor of Technology and Master of Engineering/Master of Technology in Computer Science and Engineering with First Class or equivalent either in Bachelor of Engineering/Bachelor of Technology or Master of Engineering/Master of Technology and Ph.D. or equivalent in



Computer Science and Engineering. (B) EXPERIENCE: Minimum of five years experience in teaching/research/industry of which two years post Ph D experience is desirable. NOTE-I: If a Class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first class/division. If a Grade Point system is adopted the Cumulative Grade Point Average will be converted into equivalent marks as below:-

<i>Grade point</i>	<i>Percentage of marks</i>
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%

NOTE-II: *Ph D shall be from a recognized University. NOTE-III: Equivalence for PhD is based on publication of five International Journal Papers each journal having a cumulative impact index of not less than 2.0, with incumbent as the main author and all five publications being in the authors' area of specialization. NOTE-IV: Experience at Diploma Institution is also considered equivalent to experience in degree level institutions at appropriate level and as applicable. However qualifications as above shall be mandatory. NOTE-V: The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified.*

Specialization for the post:

- a) Computer Science & Engineering/Computer Science & Systems Engineering /Software Engineering/Computer Engineering*



- b) Information Security /Information Security & Management /Computer Networks/ Internet Security/ Network Management.
- c) Information Systems/Distributed Systems/Real Time Systems/Data Warehousing and Data Mining.
- d) Information Technology and Applications /Computer Technology/Information Technology.

DESIRABLE: Post Ph.D. publications and guiding Ph.D. students. **DUTIES:** Teaching, research /consultancy projects & guidance to UG/PG students. To develop and upgrade Laboratories as per latest technology, represent institute in technical meets. To perform work related to the affiliating Universities and to assist the principal in academic & co-curricular activities and other allied duties. **HQ:** Department of Training & Technical Education, Govt. of NCT of Delhi.

7. (Vacancy No. 17122307509) Five Assistant Professor (Technical) (Computer Science and Engineering), Ambedkar Institute of Advanced Communication Technologies & Research, Directorate of Training & Technical Education, Govt of NCT of Delhi (SC-01, ST-01, UR-03). The post is suitable for Physically Challenged Persons viz. Orthopaedically Handicapped/ Locomotor Disability /Cerebral Palsy with disability i.e. One leg affected (Right or Left) (OL) or One arm affected (Right or Left) OA). The posts are temporary. **PAY SCALE:** Rs. 15600-39100 (PB-3) + Rs. 6,000/- Academic Grade Pay). General Central Service, Group 'A', Gazetted; Non-Ministerial. Age: 35 yrs. **QUALIFICATIONS: ESSENTIAL: (A) EDUCATIONAL:** Bachelor of Engineering/Bachelor of Technology and Master of Engineering/Master of Technology Computer Science and Engineering with First Class or equivalent either in Bachelor Engineering/Bachelor of Technology or Master of Engineering/Master of Technology from a recognized



University. **NOTE-I:** If a Class/division is not awarded, minimum of 0% marks in aggregate shall be considered equivalent to first class/division. If a Grade Point System is adopted the Cumulative Grade Point Average will be converted into equivalent marks as below:-

Grade point	Percentage of marks
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%

Specialization in M.E./M.Tech for the post:

- Computer Science & Engineering/Computer Science & Systems Engineering /Software Engineering/Computer Engineering
- Information Security /Information Security & Management /Computer Networks/ Internet Security/ Network Management.
- Information Systems/Distributed Systems/Real Time Systems/Data Warehousing and Data Mining.
- Information Technology and Applications /Computer Technology/Information Technology.

NOTE-I: The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified.

DUTIES: Teaching, research/consultancy projects & guidance to UG/PG students. To develop and upgrade Laboratories as per latest technology, represent institute in technical meets. To perform work related to the affiliating Universities and to assist the principal in academic & co-curricular activities and other



allied duties. **HQ:** Department of Training & Technical Education, Govt. of NCT of Delhi.

8. (Vacancy No. 17122308509) **Seven Assistant Professor (Technical) (ECE), Ambedkar Institute of Advanced Communication Technologies & Research, Directorate of Training & Technical Education, Govt of NCT of Delhi (SC-02, ST- 01, UR-04).** The post is suitable for Physically Challenged Persons viz. Orthopaedically Handicapped/ Locomotor Disability /Cerebral Palsy with disability i.e. One leg affected (Right or Left) (OL) or One arm affected (Right or Left) (OA). The posts are temporary.

PAY SCALE: Rs. 15600-39100 (PB-3) + Rs. 6,000/- (Academic Grade Pay). General Central Service, Group 'A', Gazetted; Non-Ministerial. Age: 35 yrs. **QUALIFICATIONS:**

ESSENTIAL: (A) **EDUCATIONAL:** Bachelor of Engineering/Bachelor of Technology and Master of Engineering/Master of Technology Engineering with First Class or equivalent either in Bachelor of Engineering/Bachelor of in Electronics and Communication Technology or Master of Engineering/Master of Technology from a recognized University. **NOTE-I:** If a Class/division is not awarded, aggregate shall be considered equivalent to first class/division. If a Grade Point system minimum of 60% marks in is adopted the Cumulative Grade Point Average will be converted into equivalent marks as below:-

Grade point	Percentage of marks
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%



Specialization in M.E./M.Tech for the post:

- a) Communication Engineering / Digital Communication / Electronics and Communication
- b) Signal Processing/Image Processing/Digital Signal Processing
- c) Microwave Engineering/Radar and Communication/RF and Microwave
- d) Microelectronics/VLSI/Embedded Systems/Electronics Engineering

NOTE-I: The qualifications are relaxable at Commission's discretion in case of candidates otherwise well qualified.

DUTIES: Teaching, research/consultancy projects & guidance to G/PG students. To develop and upgrade Laboratories as per latest technology. present institute in technical meets. To perform work related to the affiliating Universities and to assist the principal in academic & co-curricular activities and other allied duties. **HQ:** Department of Training & Technical Education, Govt. of NCT of Delhi.

x

x

x

3. MINIMUM ESSENTIAL QUALIFICATIONS: All applicants must fulfill the essential requirements of the post and other conditions stipulated in the advertisement. They are advised to satisfy themselves before applying that they possess at least the essential qualifications laid down for various posts. No enquiry asking for advice as to eligibility will be entertained...”

66. Perusal of the above quoted portion of the advertisement nowhere reveals that experience is set out to be a factor to be appointed or selected to the post advertised therein. Further, this Court is of the view that any such factor, if set out therein, would mean to be a violation of constitutional principles and law of equality, which again would be contrary to the law



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discussed in the preceding paragraphs. The law stipulates that a benefit can only be granted in a particular criteria that too only after noting that such criteria is a criteria applicable/provided for appointment to the post, otherwise in spirit, the ratio of *Umadevi (Supra)* will be violated because contractual employees who do not have a right to be regularized might seek a right of “preemption” i.e., preference over other candidates, to be appointed to posts which have been advertised in the regular manner for permanent employment since the same is a due process in accordance with the law.

67. It is observed that if a particular candidate/applicant is given a benefit of experience *qua* the contractual posts in which they have worked, it would lead to unjust practices, hence against the jurisprudence of service matters. Therefore, this Court rejects the argument urged on behalf of the petitioners that their experience of working as Assistant Professors should be considered in their favour for appointment to the posts in question and it is held that appointments can only be in accordance with the criteria laid down and the relevant recruitment rules or the applicable circulars and the guidelines laying down the eligibility criteria.

68. Upon examination of the appointment letters and the renewal letters filed on record by the petitioners, it has been observed by this Court that the petitioners had agreed to the terms and conditions mandated under the contract of appointment/renewal. The contents of the said terms and conditions states that the petitioners have from time to time accepted that their appointments can be terminated by the government by giving prior



notice. It has been further stated therein that the appointment will not confer on the appointee, i.e., the petitioners herein, any right or claim for regular appointment to the post. The above-mentioned terms and conditions have been reproduced as under:

“....Their extension of the contract in Ambedkar Insitute of Advanced Communication Technologies & Research, for the period from. 01.07.2016 to 30.06.2017 is allowed on the following terms and conditions:-

- 1. The above appointment will be w.e.f their date of joining after summer vacation till 30/06/2017, as they were not detained during summer vacation, 2016 or till the post is filled on regular basis through UPSC whichever is earlier. In case, if required, the Govt. reserves the sole right of considering an extension of contract beyond the above said period.*
- 2. The appointment can be terminated by the Govt. by giving one-month notice of giving one-month salary, without assigning any reason.*
- 3. In case the appointee wishes to leave the assignment, he/she will have to give one month's notice or surrender one-month salary.*
- 4. The appointee shall take full teaching load as prescribed in the curriculum. This will in no case be less than 16 hours/week for lecturer.*
- 5. The appointee shall not be entitled to any benefits of provident fund, pension, gratuity, medical attendance and treatment or any other benefits available to Government servants, appointed on regular basis.*
- 6. The appointee will not be entitled to Government Residential accommodation or H.RA. in lieu thereof.*
- 7. This appointment will not confer on the appointee any right or claim for regular appointment to the post and an undertaking will have to be furnished that no court cases will*



be filed during after completing of the contract period for seeking any regular appointment.

8. The appointee shall be on the whole-time employment of the college and shall not accept any other appointment paid or otherwise during tenure of the contract. However, he will be allowed to take part-time assignments in cases such assignment does not affect his/her duties in the college during working hours. Decision of the government on this issue will be final.

9. The appointee shall be entitled for casual leave of 8 days with prior approval of the Principal in a year in addition to government holidays. No other leave/vacation with or without pay will be admissible under any circumstances.

10. During vacation period, the payment of remuneration will be directly linked to performance of teaching and other assigned duties and work like development, etc.

11. The appointee shall assist the principal in any assignment given by the Principal concerned.

12. The appointment shall be strictly on contract basis only and appointee will not regularized in any case.

13. The consolidated amount of contract will remain same for the entire period of contract.

The appointment will be further subject to production of certificate of Medical Fitness - from a Doctor having at least MBBS degree and verification of original educational degree/certificates, residential proof and Photo-Identity Proof and execution of agreement of contract on stamp paper worth Rs. 100/- duly attested by Notary.

In case individual is willing to accept the offer on above terms & conditions he / she may give his / her acceptance at the earliest. If no reply is received within 10 days from the date of receipt of this letter, the offer will be treated as cancelled.

This issues with the prior approval of competent authority...”



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69. It is observed from the perusal of the letter dated 26th November 2020, addressed to the Director, Directorate of Training & Technical Education (hereinafter “DTTE”) by the Registrar of the respondent university that due to the decision of merger of Ch. Brahm Prakash Govt. Engg. College, Jaffarpur, Delhi and Ambedkar Institute of Advanced Communication, Technology, Research, Geeta Colony, Delhi, the management of NSUT has taken the decision to fill in the vacant positions as per the rules of recruitment which is the recruitment through proper and due process, therefore, it was decided that the terms of the contractual employees working under the said colleges shall not be renewed. The regular faculty members were given an option either to adopt the service conditions of NSUT or to continue to work on the service condition on which they were appointed.

70. In the later case, such faculty/ staff members were to continue in NSUT on deemed deputation basis. No such direction was given for the contractual faculty/technical staff members. Therefore, NSUT issued a letter dated 26th November 2020, to the Director, DTTE, thereby, informing that the contract of the contractual employees in the erstwhile Institute will not be recognized by NSUT management and there will be renewal/appointment of these contractual employees after the merger. Moreover, DTTE vide office order dated 30th December 2020, allowed their continuation in NSUT East and West Campus till the completion of their existing contract period as per terms and conditions of the contract. It was categorically mentioned in the said order that these contract employees will not be eligible for further



continuation in NSUT on the basis of their services in erstwhile institute. The relevant portion of the letter dated 26th November 2020, and office order dated 30th December 2020, are being reproduced as under:

Letter dated 26th November 2020 –

“...2. In this connection, the Cabinet Decision with regard to merger of the colleges with NSUT may be referred to, especially para 14 which has been approved by the Council of Ministers. While approving the merger of these colleges with NSUT, the Cabinet has decided that regular faculty who are working in these two colleges will be treated as per the following:

xxx

4. The contractual faculty who are working in these colleges only for a particular time period. On going through the terms and conditions which have been received from these colleges, it is seen that the contract of the contractual employees can be terminated by the Govt./University by giving them only months' notice. It has been informed by the respective Principals that the proposal has been moved by them to the DTTE to issue one months' notice to these contractual employees keeping in view of the fact that after merger with NSUT, their contract with these colleges will cease to exist and NSUT management will look after the activities of these colleges as its campuses.

5. Hence, it is informed that the contract of the contractual employees of these colleges with the DTTE/ respective colleges will not be recognized by the NSUT management and there will be no association of these contractual employees with NSUT East or West Campus, after the formal notification of merger of these two colleges with NSUT is issued by the DTTE.



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This issues with the approval of the competent authority....”

Office order dated 30th December 2020 –

“..OFFICE ORDER

In pursuance of Order No.F.1(245)/SB/DTTE/Contract/1448- 1452 dated 22.12.2020 issued by the Dy. Director (SB), Directorate of Training & Technical Education, Govt. of NCT of Delhi. It is hereby ordered that the contractual faculty and staff of erstwhile Ambedkar Institute of Advanced Communication Technologies & Research, Geeta Colony, Delhi-110031 and Ch. Brahm Parkash Govt. Engg. College, Jaffarpur, Delhi will continue their services in East and West Campus of NSUT till the completion of their existing contract period as per the terms and conditions of their contract. The remuneration etc. as per their contract will be borne by the Dte. of Training & Technical Education, Govt. of NCT of Delhi.

These contract employees will not be eligible for further continuance in NSUT on the strength of their services in erstwhile Ambedkar Institute of Advanced Communication Technologies & Research, Geeta Colony, Delhi-110031 and Ch. Brahm Parkash Govt. Engg. College, Jaffarpur, Delhi.

This issues with the approval of the vice chancellor, NSUT...”

71. Further, with regard to the petitioners’ challenge to the impugned advertisement it is stated by this Court that an advertisement was issued by the concerned authority for a limited purpose, namely, for filling up the vacancies, and not regular posts. The intent of the vacancy was simply to initiate a recruitment process by the UPSC which is the in-charge and the appropriate authority concerned with the process of selection of staff at the organizations such as the present respondent university. The process of regularization involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which



have been made by the respondent university and UPSC, regular appointment on the post of prescribed under the impugned advertisement can only be made after the UPSC has found the person suitable for such appointment. At this juncture, it is pertinent to refer to a judgment passed by the Hon'ble Supreme Court in the matter of ***Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara, (2007) 5 SCC 326***, wherein, the Hon'ble Supreme Court has held that if all the eligible candidates are not called by means of the advertisement, then, the process of recruitment will violate the ratio in the case of ***Umadevi (Supra)*** as also Articles 14 and 16 of the Constitution of India. The relevant extract of the judgment passed in ***Kendriya Vidyalaya Sangathan (Supra)*** is reproduced as under:

“10. Had such regular vacancies been created, the appellants would have been directed to be appointed on an all-India basis. The respondents did not get their names registered in the Central Employment Exchange. Keeping in view the nature of the job and in particular that the posts are transferable throughout the country, an opportunity within the meaning of Articles 14 and 16 of the Constitution of India would mean an opportunity to all who are eligible therefore....”

72. In view of the observations made by the Hon'ble Supreme Court in the afore-cited judgment, is held that the petitioners' challenge against the impugned advertisement is without any merits and accordingly rejected.

73. The question, therefore, which arises for consideration is as to whether the petitioners could lay a valid claim for regularization of their services. The answer thereto must be rendered in the negative since regularization cannot be claimed as a matter of right. It is settled law that an



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illegal appointment cannot be legalized by taking recourse to regularization, what can be regularized is an irregularity and not an illegality.

74. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements.

75. The Hon'ble Supreme Court in the case of *National Fertilizers Ltd. v. Somvir Singh* (2006) 5 SCC 493, has reiterated that persons who have been only appointed for temporary periods on contractual basis, such persons cannot claim regularization in service.

76. Applying the same to the facts of the instant matter, it is contemplated that at no point of time the petitioners' services were made permanent and that the petitioners remained employed for a temporary period with the respondent. Hence, they cannot seek regularization.

77. Since, the applicability of law *qua* the facts and circumstances of the instant case has been discussed, it is noted that the petitioners' challenge to the impugned advertisement does not hold any water. Moreover, with regard to the important issue before this Court that whether the petitioners are entitled to be appointed is clear as it has been deliberated by way of the judgments that the right to be regularized at a contractual position is not a right vested in the petitioners and the same cannot be enforced under the writ jurisdiction of this Court.



CONCLUSION

78. This Court is of the considered view that under Article 226 of the Constitution of India, it is not proper for the Writ Courts to pass any such directions, thereby, directing the concerned authorities to absorb its contractual employees as permanent employment who have been engaged without following a due process of selection as envisaged by the constitutional scheme. Therefore, following the due process enshrined under the service jurisprudence, the Constitutional principles shall only be upheld if the appointment is being done in terms of the relevant rules and after providing proper opportunities to all the qualified persons.

79. It is a settled legal proposition that the Court should exercise its power under Article 226 very cautiously and sparingly, and in exceptional circumstances, only in a given case where it is demonstrated that there is something palpably erroneous in the process of recruitment by the statutory authority. The regularization policy which seeks to regularize the services of the employees working on temporary status/contractual basis is a policy decision and, this Court by way of judicial review cannot issue any writ to do so, since the rules for regular appointments is already settled.

80. The present petitioners being appointed as contractual employees have no vested right to have their contract renewed from time to time. That being so, the petitioners have been unable to show any statutory or other right, in their favour to either have their contracts extended, or seek regularization.



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81. In view of the discussions of facts and law, this Court finds no force in the propositions put forth by the petitioners. It is held that the present writ petition is not a fit case for interference under the extraordinary writ jurisdiction of this Court, and therefore, the present writ petition is liable to be dismissed since the same is bereft of any merits.

82. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

83. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
gs/ryp/db