
(2010) 09 MP CK 0010

In the Madhya Pradesh High Court

Case No : Writ Petition No. 89 of 2010 (S)

Dr. Anil Kumar Purohit and Others

APPELLANT

Vs

Dr. Hari Singh Gaur Vishwa Vidhyalaya Sagar and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Central Universities Act, 2009 — Section 1

Constitution of India, 1950 — Article 14 , 16, 21, 22, 226

Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 — Section 11 , 23, 40, 49, 49(2)

Citation : (2010) ILR (MP) 2135

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Rajendra Tiwari, T.K. Khadka, Atul Awasthy, Harpreet Ruprah, Assem Dixit, R.P. Prajapati and Rajesh Chand, for the Appellant; G.A. for State, Shobha Menon, Rahul Choubey and Alok Vagecha for Hari Singh Gaur, Vishwa Vidhyalaya Sagar, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—As common questions of law and facts are involved in all these petitions and as the reliefs claimed are also identical, all these petitions are being heard and decided by this common order.

2. For the sake of convenience, pleadings and documents available in the record of W.P. No. 89/2010 are being referred to.

3. The Petitioners, herein, were appointed as Samvida (Contract) Teachers and feel aggrieved by the action of the Respondent University in not regularizing their services, inspite of a resolution passed by the Executive Council of the University on 01-05-2008. Seeking a mandamus to the University for enforcing the resolution passed by the Executive Council on 01-05-2008, the Petitioners have filed these writ petitions.

4. All the Petitioners are qualified, hold Master's Degree, Doctoral Degree and other qualifications as is prescribed by the University Grant Commission for

appointment on the post of teachers in the University. According to the Petitioners they fulfill the requisite eligibility criteria for being appointed as Lecturers/Assistant Professors/Readers in the University, have passed the requisite National Eligibility Test (NET) organized by the University Grants Commission, possess the requisite qualification and each of the Petitioners have filed documents and certificates in support of their contentions.

5. Respondent Dr. Hari Singh Gaur Vishwa Vidhyalaya Sagar is a Central University and has been so constituted w.e.f. 15-01-2009, vide Gazette notification dated 20-03-2009, issued in accordance to Section -1 of the Central Universities Act, 2009. By the aforesaid Act, Regional Universities like Guru Ghasidas Vishwavidyalaya (Chhattisgarh State), Dr. Harisingh Gaur Vishwavidyalaya (State of M.P.) and Hemvati Nandan Bahuguna Garhwal University (State of Uttarakhand) were incorporated and established as Central Universities under the Central Act. There is no dispute in this regard. Prior to coming into force of the Central University Act and incorporation and establishment of the Dr. Harisingh Gaur Vishwavidyalaya, as a Central University, it was a "Vishwavidyalaya" incorporated and established under the M.P. Vishwa Vidyalaya 1973 (hereinafter referred to as Adhiniyam 1973). It is the case of the Petitioners that Dr. Harisingh Gaur Vishwavidyalaya was initially established under the Adhiniyam 1973 and in a meeting of the Coordination Committee of various Universities held on 26-06-2006, a Scheme for appointment of Samvida (Contract) Teacher was approved. The Scheme as approved is contained in Annexure P-4. According to the Petitioners on the basis of the decision of the Coordination Committee of various Universities, Dr. Harisingh Gaur Vishwavidyalaya issued an advertisement on 29-08-2006, inviting applications in the prescribed form from eligible candidates for appointment as Samvida(contract) teachers for the academic session 2006-07 in the various teaching departments of the Universities as is indicated in the advertisement. In the advertisement, the conditions stipulated for appointment were the same as was incorporated by the Coordination Committee in the Scheme Annexure P-4. It is the case of the Petitioners that in pursuance to the advertisement they appeared and participated in the process of selection and all the Petitioners were appointed after due interview and selection on various posts initially for a period of 6 months on a consolidated remuneration of Rs. 8000/-

6. The Petitioners have filed the call letters received by them for participating in the interview and selection process i.e. Annexure P-7 and the orders of appointment as Annexures P-8 and P-9 respectively. It is the case of the Petitioners that as per the advertisement and the scheme Annexure P-4, even though the appointment was initially for a period of 6 months, it could to be renewed for another period of 6 months after the work of the teacher was assessed by a duly constituted Assessment Committee appointed by the "Kulpati", thereafter the said appointment could continue for a maximum period of 3 years. It is the case of the Petitioners that after assessment of their work, finding their work to be satisfactory, they were continued for a further period of

two years, as is evident from the order Annexure P-II. While the Petitioners were so working, certain representations were made by some of the contract teachers on 21-04-2008, seeking their regularization in service, the matter was placed before the Executive Council of the University in its meeting held on 01-05-2008 and accordingly, vide resolution Annexure P-12, it is the case of the Petitioners that the Executive Council took a decision to regularize the services of the Petitioners. However, the Executive Council further resolved to seek approval of the State Govt. and also resolved that the financial burden for the same shall be borne by the University. According to the Petitioners, the Executive Council having decided to regularize the Petitioners, it was not at all necessary for the University to seek any further approval or concurrence from the State Government as the University itself was competent to appoint the Petitioners after due approval of the Executive Council in accordance to the "Adhiniyam 1973".

7. However, when the matter was so pending, it is case of the Petitioners that the University was converted into a Central University and the Executive Council of the Central University which met on 22-08-2009 took a decision to refer the case of the Samvida teachers to the HRD Ministry, Govt. of India for considering the question of their regularization. Minutes of the meeting of this Executive Council is filed as Annexure P-19 dated 22-08-2009 and the Central Government in the Ministry of Human Resources Department having rejected the claim of the Petitioners for regularization, the Petitioners have filed these writ petitions and the reliefs claimed for in the writ petitions are, to issue a mandamus to the University to give effect to the resolution passed by the Executive Council earlier vide Annexure P-12 on 01-05-2008 and to treat the Petitioners to be regularized in the regular establishment by virtue of this resolution. Further a writ of prohibition for restraining the Respondent University from issuing fresh advertisement and initiating process of selection is also prayed for.

8. Shri Rajendra Tiwari, learned Senior Counsel ably assisted by other Counsels appearing for the Petitioners took me through various provisions of Adhiniyam 1973, as contained in Sections 62 and 65, the powers of the University as contemplated u/s 11 of the Adhiniyam, the powers of the Kuladhipati, Kulpati, constitution of the Academic Council, various other authorities of the University like Academic Council, Financial Committee and particularly referring to the provision of Section 23 i.e. constitution of the Executive Council the powers of the Executive Council and Ordinance No. 4 issued by the University and the powers of the Coordination Committee emphasized that the University is a separate legal entity having its own perpetual succession and a common seal and the entire power for appointment of teachers in various departments of the University is conferred on the Executive Council under the Adhiniyam 1973. It was emphasized by Shri Rajendra Tiwari, learned senior Counsel that the Executive Council is the Supreme authority entitled to take any decision with regard to appointment of teaching staff to the University and for the said purpose, approval and sanction of the State Government is not warranted. It was

emphasized by him that when the Executive Council met on 01-05-2008 and took a decision to regularize services of the Petitioners, the Executive Council had full power and authority to do so. It was not necessary for the Executive Council to refer the question of regularization of the Petitioners for approval of the State Government. Contending that the Executive Council having decided to regularize the services of the Petitioners and as no further approval of the State Government is required in accordance to the statutory provisions of Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973, Shri Rajendra Tiwari argued that the decision of the Executive Council for referring the question of regularization to the State Government was not at all necessary and the resolution itself indicates that the decision was taken by the Executive Council to regularize the Petitioners.

9. Taking me through the decision of the Executive Council as contained in Annexure P-12, Shri Rajendra Tiwari, learned Counsel for the Petitioners submitted that the decision of the Executive Council was based on the facts that the Petitioners have been appointed after following a due process of selection by constituting an appropriate Selection Committee. Advertisement at the National level was issued, the Petitioners fulfill all the requirement as contemplated by the UGC and the AICTE. they are appointed against the vacant posts after following the roster for reservation. It is indicated by Shri Tiwari that the Executive Council after taking note of these factors found that the Petitioners were duly appointed to the post by a duly constituted selection committee and therefore, it took a decision to regularize the Petitioners services. Accordingly, it is stated that as the Executive Council itself is empowered to regularize the Petitioners and as the power for appointment under Adhiniyam 1973 is vested in the University, it was not at all necessary to refer the case to the State Government and as the decision is taken by the Executive Council in accordance with law, this Court can issue a mandamus for implementing the decision of the Executive Council taken on 01-05-2008. It was argued by him that this decision of the Executive Council has become final and even after the University became Central University, this resolution has neither been withdrawn or cancelled and therefore, further resolution of the Central University taken on 22-08-2009 is wholly illegal and cannot exist as the Petitioners already stood regularized before the University became a Central University and therefore, the Respondents should be restrained from proceeding any further in the matter in accordance to that decision taken after 22-08-2009.

10. Referring to the terms and conditions of appointment of the Petitioners, constitution of the Selection Committee, procedure followed for appointment of the Petitioners and the decision of the Executive Council dated 01-05-2008, Shri Rajendra Tiwari, emphasized that it is a case where Petitioners were duly appointed in accordance to the procedure prescribed by the Statute for appointment to the teaching staff of the University and merely because initially the appointment is shown to be on contract basis that does not mean that the appointment is irregular or illegal, it was emphasized by him that as the Petitioners were regularly appointed to the post, the Executive Council rightly

took a decision to regularize them and this decision can be enforced by a mandamus and the Respondents without any justification are refusing to enforce this decision of the Executive Council, which has attained finality. Emphasizing that the Petitioners appointment is in accordance with law and therefore, they are entitled to the benefit, Shri Tiwari prays for granting relief. Shri Rajendra Tiwari also took me through the provision of Ordinance No. 4 of the University to emphasize that the Petitioners are duly appointed to the post and after their contract appointments are converted into regular appointment by the Executive Council the Central University cannot retract from this decision and therefore, it is submitted that merely because the Executive Council of the University on 01-05-2008, took a decision to send the same for approval of the State Government which is not warranted under law, the Respondents cannot deny the benefits to the Petitioners on the ground that the State Government has not given its approval. It was submitted by Shri Rajendra Tiwari that the selection committee was constituted in accordance to the scheme approved by the Coordination Committee and the requirement of Section 49 of the Adhinyam 1973 and therefore, the Executive Council which was fully empowered to pass the resolution has done so in accordance with law. It is also pointed out that after the University was granted status of Central University the salary of the Petitioners was sanctioned at Rs. 25000/- per month and subsequently at Rs. 28000/- but the said benefit has not been given to the Petitioners. Accordingly contending that the Executive Council was empowered to regularize the services of the Petitioners and the Executive Council has done so in accordance to law, a mandamus be issued to accept and act as per the aforesaid decision of the Executive Council.

11. Smt. Shobha Menon, learned Senior Counsel for the University opposed the prayer and pointed out that the appointment of the Petitioners were in accordance to the scheme Annexure P-4 for appointment of Samvida/Contract teachers, it was not a regular appointment as contemplated u/s 49 of the Adhinyam 1973. The Selection Committee constituted as per the decision of the Coordination Committee vide Annexure P-4 is not the same as is contemplated u/s 49 and as the Petitioners are not appointed to the regular post after following the regular mode of appointment as contemplated u/s 49 of the Adhinyam it is stated that the decision of the Executive Council for regularization cannot be enforced by a writ of mandamus. By taking me through various provisions of the M.P. Vishwavidyala Adhinyam, 1973, Smt. Shobha Menon, tried to emphasize that as the finance control of the University is with the State Government the Respondents cannot claim regularization without due approval and concurrence of the State Government. That apart it was submitted by her that the Executive Council could not order for regularization of the Petitioners service as this was only a contract appointment under a Scheme and the same cannot be regularized in the manner done, contrary to the statutory provisions, placed reliance on the judgment rendered by a Constitution Bench of Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others,

the principles laid down in paras 43 and 45 thereon and further placing reliance on the following judgment:

Kendriya Vidyalaya Sangathan and Others Vs. L.V. Subramanyeswara and Another,

Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others,

Union of India (UOI) and Another Vs. Kartick Chandra Mondal and Another,

Md. Abdul Kadir and Another Vs. Director General of Police, Assam and Others,

State of Haryana and Others Vs. Shakuntla Devi,

State of Gujarat and Anr. v. P.J. Kampavat and Ors. AIR 1992 SC 1865

V.C., Banaras Hindu University and Others Vs. Shrikant,

State of U.P. Vs. Neeraj Awasthi and Others,

Yashwant Birla and others Vs. Pt. Ravishankar Shukla University and others,

P.S. Gopinathan Vs. State of Kerala and Others,

Sethi Auto Service Station and Another Vs. Delhi Development Authority and Others,

Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others,

Ku. Rashmi Bala Saxena and Others Vs. Jiwaji University, Gwalior and Others,

Harminder Kaur and Others Vs. Union of India (UOI) and Others,

Smt. Shobha Memon emphasized that the Petitioners regularization, ordered by the Executive Council is wholly illegal, unconstitutional, contrary to the provisions of Articles 14 and 16 of the Constitution of India and therefore, cannot be enforced by a mandamus. It was argued by learned Senior Counsel that the procedure followed for appointment in the present case is not the one contemplated for appointment to the regular post u/s 49. Referring to the advertisement and the requirement contained therein, it was argued that in the advertisement itself it is indicated that the appointment is on contract basis initially for a period of 6 months to be extended, if required for 6 months but not beyond 3 years. It was argued by her that when such a advertisement seeking candidature for appointment on contract basis is only issued, many other eligible candidates, who are unemployed and who are interested in seeking appointment may not apply in response to such a advertisement because they may not be interested in getting appointed on contract basis. If an advertisement for appointment on regular basis was issued many candidates so interested would have applied. It is stated that the appointment made in this manner by inviting applications for contract appointment cannot be converted into a regular

appointment by resolution of the Executive Council, as the same is discriminatory in nature and the right of various other eligible and deserving candidates is not taken note of and who may not have applied because of the manner in which the advertisement was issued, accordingly contending that the requirement of Articles 14 and 16 of the Constitution is not fulfilled and ignoring all these aspects the Executive Council has decided to regularize the Petitioners, which is unsustainable, Smt. Shobha Menon sought for dismissal of this writ petition. By taking me through various provisions of the Adhinyam, the method of regular appointment and the method for appointment undertaken in the present case, emphasized that the appointment made under a scheme for contract appointment cannot be converted into a regular appointment in the manner done and therefore, no mandamus can be issued. Further contending that the decision of the Executive Council of the University taken on 01-05-2008 is not a legal or valid decision, it was only a proposal and such a proposal cannot be enforced in the manner prayed for Smt. Shobha Menon seeks for rejecting the claim made. It was emphasized by her that concurrence and approval of the State Government to the proposal of the Executive Council was necessary and therefore, the regularization is not complete. Taking me through the requirement of the scheme for appointment as contained in Annexure P-4, the procedure for appointment followed and the undertaken given by the Petitioners filed alongwith the return Smt. Shobha Menon argued that it is a case when the Petitioners knew that they are being appointed on contract basis, their appointment is temporary, they are not entitled to any regularization and therefore, claim now made by them being contrary to their undertaking cannot be enforced by a mandamus. The decision of the Executive Council of the University and the order of the Central Government as contained in Annexure RJ-7 dated 20-01-2010 to terminate the services of the Petitioners whose contract was to come to an end on 01-04-2010 is a proper decision, accordingly, she prays for dismissal of the writ petition. Detailed written submission incorporation various objections in this regard alongwith judgments relied upon is filed by Smt. Shobha Menon for perusal of this Court, the same shall be referred to as and when required.

12. I have heard the learned Counsel for the parties at length and perused the records. Even though during the course of hearing, Counsel for either party canvassed the respective contentions on their behalf and pointed out that the regularization ordered by the Executive Council is correct or otherwise. On consideration of the totality of the circumstances, the facts and legal question involved, I am of the considered view that this is a case where initial appointments of the Petitioners were made on contract basis for a period of 6 months, it was extended and subsequently regularized. The question therefore would be as to whether regularization of the contract appointment is in accordance to law and as to what would be the effect of such regularization? whether it is in violation to the mandate of Articles 14 and 16 of the Constitution of India, as canvassed by Smt. Shobha Menon, learned Counsel for the University.

13. It is therefore, thought appropriate to examine the legal principle governing

appointment to public servant and the principles with regard to regularization of appointment made to public servant and the procedure followed in the present case. Further even though various judgments were relied by Smt. Shobha Menon in support of her contentions and Shri Rajendra Tiwari, learned Senior Counsel by referring to each and every judgments refuted the aforesaid contentions and submitted that the judgments are not applicable in the facts and circumstances of the case. This Court is of the considered view that the law relating to appointment to public service and the question of regularization of these appointments made to public service is now well settled and decided by a Constitutional Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . That being so it would be appropriate to take note of the law laid down by the Supreme Court in the case of Uma Devi (supra). It has been held by the Supreme Court in the case of Uma Devi (Supra) that the public employment has to be as per the mandate of the Constitution and the law laid down there under. Appointments are to be made in accordance to procedure established by law and equity of opportunity in the hallmark of such appointment, it would be appropriate at this stage to take note of the Principle laid down by the Supreme Court in the case of Uma Devi (supra). After referring to the mandate of the Constitution, the Supreme Court in paras 2, 4 and 5 of the judgment has laid down the following principles:

2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made there under. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.

4. ...The Union, the States, their departments and instrumentalities 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 compete for the post.... A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. 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. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

5. ...This Court has also on occasions issued directions which could The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any Court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

(Emphasis supplied)

Thereafter requirement of maintaining equity arising out of giving temporary appointment etc. is discussed in para-13 in the following manner:

13. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of Courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions.

(Emphasis supplied)

Thereafter various judgments of the Supreme Court in the matter of public employment, regularization of service are taken note of and in para-41 the decision of the another Constitution Bench in the case of Indra Sawhney v. Union of India, 1992 Supp. (3) SCC 217 is taken note of and certain provisions reproduced and finally in para-41 it is held by the Supreme Court that the binding decisions indicated by the Supreme Court are clear imperatives that

adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment. Finally the matter is so dealt with in paras 43, 44 and 45.

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.

44. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal

work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the Court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so. would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment....

45. While directing that appointments, temporary or casual, be regularized or made permanent, Courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so. it will be creating another mode of public appointment which is not permissible. If the Court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the Court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail

when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

(Emphasis supplied)

14. Again in para - 47 the nature of appointment of temporary contract basis is take note of the promise flowing out of such appointment is indicated in the following manner:

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

(Emphasis supplied)

and after taking note of all these aspect, the principle is laid down in para 50 in the following manner:

50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the Respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from

time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

(Emphasis supplied)

15. On a complete scanning of the aforesaid judgment of the Supreme Court, it would be seen that the equality of opportunity is held to be a hallmarks in the matter of public appointment. It is emphasized by the Supreme Court that any process initiated for appointment which results in keeping out those who are qualified for applying for a post and depriving them to compete for appointment to the post is violative of Articles 14 and 16 of the Constitution of India. Equity for the million who are unemployed and their right to seek fair opportunity to compete for appointment is held to be a constitutional mandate. That apart it is emphasized by the Supreme Court that if illegal appointment is made the same cannot be regularized, what could be regularized is only an irregularity committed in appointment, if the statutory Rules and Regulations for appointment are violated, the same would be an illegality and not an irregularity. If paras 43 and 44 of the judgments are taken note of, the marked portion would indicate that proper competition among qualified persons is required for appointment and if a contract appointment is made without proper competition among qualified persons, such appointment is illegal. Deviating from the principle of granting equal opportunity to participate in the process of selection and appointment to public employment is deprecated by the Supreme Court in the case of Umadevi (supra).

16. Even though during the course of hearing, Smt. Shobha Menon. Learned Senior Counsel had referred to various other judgments as is indicated in para -11 of this order but in view of the principles laid down by the Constitution Bench of the Supreme Court in the case of Umadevi (supra), it is not necessary to refer to those judgments now, most of the judgments either lay down the same principle or have followed the dictum of the Supreme Court in the case of Umadevi (supra). In that view of the matter, it is not now necessary to burden this order with all these judgments. It is therefore, now appropriate to consider as to what process for appointment and regularization in the present case was followed and to analysis as to whether the same is in conformity with the mandate of the Supreme Court as indicated hereinabove. Accordingly, it would be appropriate at this stage to analysis the procedure followed from the stage when the decision was taken by the Coordination Committee to make appointment of Samvida/contract teachers.

17. The minutes of the meeting of the Coordination Committee ultimately became the scheme for appointment in question as contained in Annexure P-4 and if the said scheme is taken note of it is seen that the scheme approved was for appointing Samvida/contract teachers against the sanctioned post through advertisement. It was decided that the contract teachers would be paid a consolidated salary of Rs. 8000/- per month and higher consolidated salary may

be offered on the basis of qualification and other consideration after approval of the Selection Committee. Clause-3 of the scheme contains the provisions for consideration of the Selection Committee and reads as under:

3. Selection will be made by a Selection Committee comprising of:

- (a) Kulpati or his Nominee - Chairman
- (b) Dean to be nominated by the Kulpati
- (c) Two subject experts to be nominated by the Kulpati
- (d) Members belonging to SC/ST/OBC to be nominated by the Kulpati

Presence of one subject expert....

Thereafter it is indicated that the appointment should be made for a period of six months. Attempt should be made to fill the post as early as possible on regular baais and if this is not possible then the contract may be renewed for a further period of 6 months or less after assessing the performance by a committee appointed by the Kulpati. However, the appointment is not to go beyond the period of 3 years. Thereafter in clauses 10 and 11 a provisions for undertaking is incorporated and the Petitioners have given undertaken in this regard. The advertisement Annexure P-5 indicates the same conditions as is contained in the Scheme Annexure P-4 is incorporated . The Petitioners were called for interview and have been appointed initially for a period of 6 months, extended for a further period of six months after assessment of performance and subsequently it has been extended for a further period of 2 years, i.e. for a total period of 3 years and the appointments were to come to an end on 01-04-2010. It is the case of the Petitioners that even though they are appointed on contract basis but as they were duly selected by a duly constituted selection committee, which is in accordance to law their regularization is proper. The Executive Council also in its meeting has so indicated. That being so it is thought appropriate to examine the requirements contemplated u/s 49 of the Adhiniyam 1973 for regular appointment.

18. Chapter-IX of the Adhiniyam 1973 contains the provisions for appointment to the teaching post in the University and Sub-Section 2 of Section 49 contemplates the provisions for constitution of the Selection Committee and the same is reads as under:

49(2) The members of the committee of selection shall be:

- (i) Kulpati- Chairman,
- (i-a) (x x x)
- (ii) (xxx)
- (iii) one expert to be nominated by Kuladhipati from a panel, A panel, submitted by the academic council of three experts in the subject, not connected with the

University in any manner whatsoever.

(iv) Three subject experts, not connected with the University in any manner whatsoever to be nominated by the Kuladhipati. Provided that atleast one of three experts shall be nominated from category of Scheduled Castes,, Scheduled Tribes nor other Backward classes. In case of non-availability of an expert from these categories, one Administrative Officer not below the rank of Commissioner, who belongs to reserved categories, shall be nominated.

(v) (x x x)

(3) Three members of the selection committee shall form a quorum.

(4) The Committee shall investigate the merits of the various Candidates, and shall recommend to the Executive Council the names, if any, of persons whom it considers suitable for the posts, arranged in order of merit.

Provided that no recommendation shall be made unless at least two experts nominated under Clause (iii) and (iv) of Sub-section (2) are present in the meeting ion which recommendation is to be decided upon.

If the constitution of the Selection Committee as contemplated u/s 49(2) is compared with the Selection Committee constituted under the Scheme Annexure P-4, it is apparent that the Selection Committee constituted, which appointed the Petitioners on contract basis is not a proper or duly constituted Selection Committee as required under the provisions of Section 49(2). Chairman of the Selection Committee under the scheme was to be either the Kulpati or his nominee, however under Sub-Section 2 of Section 49, the Kulpati had to be the Chairman. The Selection Committee which was constituted in the present case under the Scheme did not contain the Kulpait as its Chairman but it was a nominee of the Kulpati who participated in the selection proceedings as the Chairman. That apart Section 49 contemplates nomination of one expert by the Kuladhapati of the University. No such nomination by the Kulpadhipati as an expert is contemplated in the Scheme, Annexure P-4. Instead two subject experts are nominated by the Kulpati. Section 49(2) contemplates presence of 3 subject experts, not connected with the University to be nominated by the Kuladhipati. If requirement of Section 49(2) in the matter of constitution of the Selection Committee and the Selection Committee constituted under the Scheme are analyzed, it would be clear that the Selection Committee constituted under the Scheme was not meeting the requirement of the statutory provisions and therefore, Smt. Shobha Menon is right in contending that the appointment was made by a Selection Committee which was inferior to the one as is required u/s 40 of the Adhiniyam 1993. It is therefore, a case where the appointment is made in an illegal manner, contrary to the requirement of law and therefore, if the principles laid down in the case of Uma Devi (supra) are applied in the matter of appointment in question and the procedure followed in the present case seen, it has to be held that the appointment is illegal, it is contrary to the provisions of law. An illegal appointment cannot be regularized and therefore, the Executive

Council has committed an error in regularizing the appointment which was illegal. To that extent this Court has no hesitation in accepting the contention of the University.

19. That apart the matter can be viewed from a different prospective also, if the requirement contemplated by the Constitutional Bench of the Supreme Court in the case of Uma Devi (supra) with regard to fulfilling the mandate of Articles 14 and 16 of the Constitution of India in the matter of granting equal opportunity to all concerned to participate in the process of public employment is taken note of it would be seen that in the present case advertisement Annexure P-5 issued was clearly for appointment as contract teachers for the academic session 2006-07 and that also for a period of 6 months initially. When such advertisement for appointment is issued, many eligible, deserving candidates may feel disinterested in seeking appointment on contract basis. On the contrary If regular process of appointment is initiated and a proper advertisement for regular appointment was issued then all such candidates would have applied and participate in the process of selection, the very nature of advertisement issued makes a lot of difference and therefore, when the advertisement issued is for appointment on adhoc or contract basis and if such appointee is regularized under the process of regularization the same stands vitiated as it deprives the constitutional right to equality in the matter of opportunity to seek public appointment to many prospective candidates who would have otherwise applied but for the manner in which the advertisement was issued. That being so, it is case where the provisions of Articles 14 and 16 of the Constitution of India are violated and the right of equal opportunity to seek appointment as laid down by the Supreme Court in the case of Uma Devi (Supra) is violated. Accordingly, on this ground also regularization ordered by the Executive Council stands vitiated as it is in contravention to the requirement of the constitutional mandate as contemplated under Articles 14 and 16 of the Constitution of India.

20. Accordingly, taking note of the procedure followed in the present case in the light of the principles as laid down by the Supreme Court, I am of the considered view that the Executive Council in regularizing such an appointment which was made contrary to procedure contemplated under law has committed an error and therefore, no mandamus can be issued by this Court for implementing such a resolution of the Executive Council which is contrary to the mandate of the constitution and the law laid down by the Supreme Court in the case of Uma Devi (Supra) having so held, I am of the considered view that now it is not necessary for this Court to go into various other aspect of the matter which was canvassed by both the parties during the course of hearing. Once it is found by this Court that the appointments of the Petitioners were illegal, being in total disregard to the requirement of law and when it is found that such an appointment cannot be regularized, no further interference can be made in these writ petitions and therefore, now it is not necessary to go into various other questions and the one with regard to whether the approval of the State Govt. was necessary or not.

21. Accordingly in the facts and circumstances of the case finding the claim made by the Petitioners to be wholly unsustainable, contrary to law. no relief can be granted. However, as and when the Respondent University undertakes a process for regular appointment to the post in question they shall permit the Petitioners to participate in the same and by granting them age relaxation to the extent of work done by them on contract basis , permit the Petitioners to participate in the process of selection.

22. Accordingly in the facts and circumstances of the case, finding no merit in the claim made by the Petitioners, all these petitions are dismissed, without any order so as to costs.