

(2019) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 51342, 58783, 58785, 10472, 46087 Of 2016, 49665, 49667, 22281, 22282, 21914, 10199, 17867 Of 2015, 15649, 15651, 12182, 16826 Of 2018, 8266, 7067, 7078, 10612, 10673 Of 2019

Dr Kantaharaju M

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 23-04-2019

Acts Referred:

Karnataka State Universities Act, 1976 — Section 36(1), 51B

Police Act, 1861 — Section 17, 18

Karnataka State Universities Act, 2000 — Section 51B, 53, 54, 55, 56, 57

Citation : (2019) 04 KAR CK 0006

Hon'ble Judges : R. Devdas, J

Bench : Single Bench

Advocate : Ravivarma Kumar, Onkara K B, P N Manmohan

Final Decision : Disposed Off

Judgement

1. The petitioners in all these writ petitions have raised similar questions for consideration and the prayers in common are seeking a writ of mandamus to the respondent State Government and University to regularize their services or to extend the benefit of University of Mysore (Absorption, Regularisation of Temporary Full Time/Part Time Lecturers) Statutes, 2004, to the petitioners. Therefore, these petitions are clubbed, heard together and disposed of by this common order.

2. The petitioners contend that they have been serving as temporary lecturers/guest lecturers in the respondent University or associate colleges of the respondent University for more than ten years and some of them have put in more than twenty four years, without any break, except artificial breaks from year to year.

3. On behalf of the petitioners, Sri Ashok Haranahalli and Prof.Ravivarma Kumar,

learned Senior Counsels have addressed their arguments, while Sri P.S.Rajagopal, learned Senior Counsel has argued for the respondent University.

4. Sri. Ashok Haranahalli, learned senior counsel submitted that the petitioners have been appointed as temporary lecturers under Section 51-B of the Karnataka State Universities Act, 1976 (hereinafter referred to as 'old Act'), which is now Section 56 under the new Act i.e, the Karnataka State Universities Act, 2000 (hereinafter referred to as 'New Act'). It is pointed out from Section 51-B that the temporary appointments of lecturers could be made for a period of six months, while under Section 56 of the new Act, temporary appointments could be made for a period not exceeding one year. Learned Senior Counsel submits that both the provisions of the old and the new Act would provide that the temporary appointments could be made only against sanctioned posts. Attention of this Court was drawn to the undertaking given by the appointees in the letter of appointments, to substantiate his contention that the appointees were precluded from undertaking any other remunerative job. Adverting to various letters of appointments, it was contended that though the appointments would specify weekly hours of duty, it was pointed out that in most of the cases the weekly hours that was stipulated were equal to the requirement of a regular, permanent appointee. It was further submitted that the appointment of the petitioners as temporary lecturers were made by the University by following the requirements as contemplated under Section 51B of the old Act and 56 of the new Act. Copies of the advertisements that were issued by the University, year to year, inviting applications for the post of temporary/guest lecturers, have been produced along with the writ petitions.

5. Drawing the attention of this Court to the decision of a Division Bench of this Court in K.Krishna and Others /vs./ The University of Mysore, Rep. by its Registrar, Mysore and Others¹, the learned Senior Counsel submits that many of the petitioners had approached this Court in various writ petitions. The decision of this Court in some of those petitions became the subject matter in W.A.No.5682- 5686/1998, decided in K.Krishna ILR 2003 KAR 2578 (supra), by the Division Bench. It was submitted that the Division Bench had taken note of the following aspects:

- (i) Appellants were post graduates with Ph.D.
- (ii) They were initially appointed as Guest Lecturers and thereafter as temporary lecturers.
- (iii) All of them had completed more than three to eight years of service as temporary lecturers, apart from working earlier as Guest Lecturers on contract basis.
- (iv) Appellants were initially called 'part time lecturers' or 'guest lecturers' and from 1992-93 onwards, full time 'temporary lecturers'.
- (v) All the appellants were appointed pursuant to the applications submitted in

response to the advertisement issued in the news papers.

(vi) They were interviewed and their qualifications were verified with reference to their marks cards and other certificates.

(vii) The appellants had discharged and continued to discharge same duties and shouldered same responsibilities as that of regular permanent lecturers.

(viii) Remuneration was initially paid on hourly basis and from 1992 onwards they were treated as full time temporary lecturers on a consolidated salary per month.

6. The learned Senior Counsel Sri Ashok Haranahalli further submitted that the Division Bench took note of the fact that the University had prepared a draft statutes on 30.03.1998 called as University of Mysore (Absorption, Regularisation of Temporary Full Time/Part Time Lecturers) Statutes, 1998, which was prepared by virtue of the powers conferred under Section 36(1) of the old Act.

7. The learned Senior Counsel submitted that the Division Bench having taken note of the fact that the Chancellor withheld his assent to the draft statutes relating to regularisation on the ground of financial crunch, however, proceeded to hold that it was the responsibility of the State Government to fund the university, keeping in mind their particular needs. It was further held that the State Government cannot shy away from its responsibility by posing the excuse of financial constraints and therefore the Division Bench directed that there shall be a scheme formulated for regularizing the appellants therein, who had completed three years of continuous service with or without break, if fully qualified at the time of entry and who were appointed pursuant to advertisement in the news papers. The Division Bench further directed the State Government to resubmit the draft statute for regularisation, preferably without reference to financial crunch, as was done in Kuvempu, Bangalore, Mangalore and other universities.

8. It is further submitted that consequent to the directions issued by the Division Bench in K.Krishna ILR 2003 KAR 2578 (supra), the assent of the Chancellor was obtained and the University of Mysore (Absorption, Regularisation of Temporary Full Time/Part Time Lecturers) Statutes, 2004 (hereinafter referred to as Statutes, 2004) was notified on 07.02.2007, but the benefit was restrained to the 33 appellants before the Division Bench.

9. Some of the petitioners herein who were aggrieved of non-consideration, approached this Court in Writ Petition No.9035/2004 and Writ Petition No.28788/2003. W.P.No.28788/2003 was disposed of on 01.09.2005 directing the respondent University to keep the claim of the petitioners seeking regularisation of their services and other consequential benefits pending till such time the Special Leave Petitions pertaining to regularisation of services of temporary/daily wage employees before the Constitutional Bench of the Apex Court is disposed of. Liberty was also reserved to the petitioners to file fresh

representations. All contentions urged by the petitioners were left open. In W.P.No.9035/2004, which was disposed of on 28.02.2006, liberty was reserved to the petitioners to pursue their efforts with the University, since the University had indicated that the petitioners had not made any representation.

10. Sri. Ashok Haranahalli, learned Senior Counsel submitted that even after the decision of the Constitutional Bench of the Apex Court in the case of Secretary, State of Karnataka And Others /vs./ Umadevi (3) And Others², and in the light of paragraph 53 of the judgment, though the University was required to consider the case of the petitioners, the University failed to consider the case of the petitioners for regularisation. Several representations in this regard have been given by these petitioners, to no avail.

11. Sri. Ashok Haranahalli, learned Senior Counsel placed reliance on the decision in Nihal Singh and others /vs./ State of Punjab and others³, to contend that the initial appointment of the petitioners herein can never be categorized as an irregular appointment. It was submitted that as in the case of Nihal Singh (2013) 14 SCC 65, the initial appointment of the petitioners herein and all subsequent appointments were made in accordance with the statutory procedure contemplated under the Act. As observed by the Apex Court, the process of appointment clearly indicates that the appointment of the petitioners were not arbitrary to the exclusion of other eligible candidates. Therefore, a direction similar to the one issued in Nihal Singh's³ case is sought by the learned Senior Counsel.

12. Prof. Ravivarma Kumar, learned Senior Counsel appearing for three writ petitioners in W.P.Nos.15649-15651/2018 submitted that two of the petitioners were in fact qualified to be regularised as provided in paragraph 53 of the

Umadevi's² case, but the respondent University chose not to regularize their services even under the Statutes, 2004. It was submitted that the only ground on which the writ petitioners were not regularised under Statutes, 2004 was that they were not appellants in the case of K.Krishna ILR 2003 KAR 2578, before the Division Bench. The learned Senior Counsel would submit that the Division Bench in K.Krishna ILR 2003 KAR 2578 did not specifically debar the consideration of persons who were not parties to the Writ Appeal.

13. Prof. Ravivarma Kumar, learned Senior Counsel further submitted that the first petitioner, in W.P.No.15649/2018 who was appointed as Drama Teacher was the whole and sole of the entire department. It was submitted that when the first petitioner was appointed, initially there were hardly any students for the subject. However, with due efforts from the first petitioner, the subject is now comprised of the maximum number of students permitted and therefore a second teacher was also appointed in the department.

14. It was further submitted that the respondent University has complied with the requirements under Section 51B under the old Act and Section 56 of the new Act, while appointing the petitioners as temporary/ guest lecturers. It was also

submitted that the appointments were against the sanctioned posts and therefore, the roster of reservation was also followed by the University.

15. Prof. Ravivarma Kumar, learned Senior Counsel placed reliance on two decisions of the Apex Court in the case of State of Karnataka and others /vs./ M.L.Kesari and others⁴ and Narendra Kumar Tiwari and others /vs./ State of Jharkhand and others⁵. It was submitted that in M.L.Kesari (supra) the Apex Court, after having considered paragraph 53 in Umadevi's case had opined that Umadevi (3)² casts a duty upon the Government or instrumentality concerned, to take steps to regularize the services of those irregularly appointed employees who had served for more than 10 years without the benefit or protection of any interim orders of Courts or Tribunals, as a one time measure. Umadevi(3) (2006) 4 SCC 1 directed that one time measure must be set in motion within six months from the date of its decision (rendered on 10.04.2006). It was submitted that the Apex Court observed that several departments and instrumentalities did not commence the one time regularisation process. On the other hand, some Government departments or instrumentalities undertook the one time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled in terms of paragraph 53 of the decision in Umadevi(3) (2006) 4 SCC 1, will not lose their right to be considered for regularisation, merely because the one time exercise was completed without considering their cases or because the six months period mentioned in paragraph 53 of Umadevi(3) had expired.

16. Prof. Ravivarma Kumar, learned Senior Counsel would vehemently contend that there was a duty cast on the State Government and the instrumentalities of the State including the Universities to fulfill the directions issued by the Constitutional Bench in Umadevi(3) (2006) 4 SCC 1.

17. In Narendra Kumar Tiwari (2018) 8 SCC 238 (supra), it was pointed out that the Apex Court has held that if a strict and literal interpretation forgetting the spirit of the decision of the Constitution Bench in Umadevi(3) (2006) 4 SCC 1, is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand would ever be regularised since that State came into existence only on 15.11.2000 and the cut off date in Umadevi(3) (2006) 4 SCC 1 was fixed as 10.04.2006. In other words, in this manner, the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench. In the light of such observations, the learned Senior Counsel would submit that the respondent University is guilty of such pernicious practice of indefinitely continuing irregularly appointed lecturers, contrary to the intent of the Constitution Bench. However, it is hastened to add that the appointment of the petitioners cannot even be termed as irregular, since their appointment is in accordance with Section 51B of the old Act and Section 56 of the new Act.

18. Per contra, Sri P.S.Rajagopal, learned Senior Counsel appearing for the

respondent-University would submit that the prayer seeking direction to regularize the services of the petitioners cannot be granted in view of the decision in *Umadevi(3)* (2006) 4 SCC 1. It was submitted that by an interim order dated 26.03.2015, this Court directed the respondent University not to relieve the petitioners and to continue their services in pursuance of subsequent interim orders. It was therefore sought to be contended that the continuation of service of the petitioners by virtue of interim orders issued by this Court would preclude their regularisation in terms of paragraph 53 of *Umadevi(3)* (2006) 4 SCC 1. It was next contended that the requirement of the procedure for appointment of a permanent lecturer and a temporary lecturer were inherently different.

Separate provisions govern the appointment of a permanent lecturer and a temporary lecturer. It was submitted that while appointing the petitioners on temporary basis, advertisement was not issued in national newspapers. Therefore, opportunity was not given to all eligible candidates. These submissions are directed against the arguments of the learned Senior Counsels for the petitioners, who had placed reliance on the decision in *Nihal Singh* (2013) 14 SCC 65 (*supra*).

19. Sri P.S.Rajagopal, learned Senior Counsel further submitted that the appointment orders would clearly substantiate the fact that the appointment of the petitioners were on hourly basis. The appointments were not against the sanctioned posts. No advertisement was issued. No interview was conducted. No examination was conducted. The appointment orders were issued by the Vice Chancellor, not with the prior approval of the Board of Appointment.

20. It was further contended that at paragraph 54 in *Umadevi (3)*², the Constitution Bench has clarified that those decisions which run counter to the principles settled in *Umadevi(3)* (2006) 4 SCC 1 or in which, directions running counter to what was held therein, would stand denuded of their status as precedents.

21. The learned Senior Counsel would further contend that the direction restricting the benefit of regularisation only to the appellants before the Court in *K.Krishna* ILR 2003 KAR 2578 (*supra*) remaining unquestioned, the petitioners cannot seek the benefit of the Statutes, 2004 to be extended to the petitioners. It was also submitted that since similar prayers in W.P.No.28788/2003, which was disposed of on 01.09.2005 and W.P.No.9035/2004, which was disposed of on 28.02.2006, were rejected, it was submitted that these petitions coming up with similar prayers, should not be entertained.

22. It was further submitted that teachers/ lecturers are required to be appointed by following the UGC norms, reservation orders of the State Government and as per the UGC norms candidates should possess NET (National Eligibility Test) and Ph.D degree must have been obtained strictly in compliance with 2009 Regulations. It is contended that the petitioners did not possess the

required qualification as on initial appointment and many of them do not fulfill the criteria even as on today.

23. On facts, it was also submitted that the petitioners were not precluded from making an application when advertisements were issued by the respondent university. It was pointed out that the Statutes governing appointment of teachers in the respondent university do not stipulate any upper age limit for appointment and therefore, any eligible candidate between the age of 18 years and 59 years could apply when advertisements are issued.

24. Sri P.S.Rajagopal, learned Senior Counsel has placed reliance on the following decisions:

(i) Mangalore University Non-teaching Employees Association /vs./ Mangalore University - ILR 1998 KAR 2219.

(ii) Rajeshwari.C.B. /vs./ The Chancellor and another - 1989 (1) KLJ 351 (DB).

(iii) Mangalore University /vs./ Dr.C.Kusumakara Hebbar - ILR 1993 KAR 827 (DB).

(iv) Smt. Hohisin Arabegum /vs./ State of Karnataka - ILR 1999 KAR 2328.

25. Since these decisions are pre-Umadevi(3), this Court is of the opinion that in view of the subsequent judgments of the Apex Court in this regard, these decisions may not be of much help in the present.

26. Insofar as non-compliance of the requirement of Rules regarding advertisements and the consequences, the learned Senior Counsel placed reliance on judgments of the Apex Court in the case of Nagendra Chandra and others /vs./ State of Jharkhand and others⁶ and Renu and others /vs./ District and Sessions Judge, Tis Hazari Courts, Delhi and another (2014) 14 SCC 50 . While placing reliance on the decision in State of Tamil Nadu /vs./ A.Singamuthu (2017) 4 SCC 113 , it was submitted that it is well settled that part-time teachers are not entitled for regularisation. In that regard, it was submitted that when remuneration is linked to number of hours of teaching the appointment is part-time and any other condition in the order of appointment contrary to it does not make it full time. While placing reliance on M.S.Patil (Dr.) /vs./ Gulbarga University and Others (2010) 10 SCC 63 it was submitted that long years of ad hoc service does not make the appointments permanent. Concept of adverse possession is inapplicable in service law. It was further submitted that in Umadevi(3) (2006) 4 SCC 1 it has been held that continuance for a long time would not mean that they have acquired a right for regularisation. It was also submitted that High Court has no jurisdiction to frame a scheme by itself or direct the framing of a scheme for regularisation.

[27. Heard the learned Senior Counsels, perused the writ papers and the judgments cited by the learned Senior Counsels.

28. In paragraph-53 of Umadevi (3)², the Constitution Bench has clarified the

position regarding irregular appointments (not illegal appointments) as explained in *Of Mysore /vs./ S.V.Narayanappa* AIR 1967 SC 1071 , *R.N.Nanjundappa /vs./ T.Thimmiah* (1972) 1 SCC 409 and *B.N.Nagarajan /vs./ State of Karnataka* (1979) 4 SCC 507 , of duly qualified persons in duly sanctioned vacant posts and where such persons have continued to work for 10 years or more but without the intervention of orders of Courts or of Tribunals. In paragraph-15 of *Umadevi* (3)2, with reference to the above three judgments, it was reiterated that it was a misconception to consider that regularization meant permanence. The Constitution Bench affirmed the position that ratification or regularization 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 appointments. Regularization 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. It was clearly held that the words "regular" or "regularization" 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.

29. The Apex Court emphasized that when rules framed under Article 309 of the Constitution are in force, no regularization is permissible in exercise of executive powers of the Government under Article 162 of the Constitution in contravention of the rules. In the light of reiteration of the said principles, the Constitution Bench directed the authorities to keep in mind this distinction 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 regularized and that it alone that can be regularized and granting permanence of employment is totally different concept and cannot be equated with regularization.

30. The Constitution Bench in *Umadevi* (3)2, while keeping the above principles in mind, over-ruled the earlier decisions of the Apex Court in the case of *Daily Rated Casual Labour /vs./ Union of India* (1988) 1 SCC 122 , *Bhagawati Prasad /vs./ Delhi State Mineral Development Corporation* (1990) 1 SCC 361 and *Dharwad District PWD Literate Daily Wage Employees Association /vs./ State of Karnataka* (1990) 2 SCC 396, where directions had been issued to the Government to frame a scheme for absorption of daily-rated casual labourers continuously working for more than one year. It was further held that it might be one thing to say that the daily-rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite different thing to say that a socialist republic and its executive, is bound to give permanence to those who are employed as casual labourers or temporary hands and that too without process of selection or without following the mandate of the Constitution and the laws made thereunder concerning public employment.

31. The Constitution Bench examined the issue from another important and essential angle viz., financial burden on the State. In that regard, the Constitution Bench framed the question, "Can the Court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly?"

32. The decision of the Hon'ble Supreme Court in the case of State of Haryana / vs./ Piara Singh (1992) 4 SCC 118 the observations at paragraphs No.21, 45 and 49 were taken note of. Paragraphs No.21, 45 and 49 of Piara Singh (supra) reads as follows:

"21. The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. it is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

"45. "The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee."

"49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State ."

33. However, the Constitution Bench deprecated the practice of the State and its instrumentalities in indulging in temporary employment to permanent posts. The Constitution Bench was of rock solid view that it is bound to insist on the State making regular and proper recruitments and it is bound not to encourage or shut its eyes to persistent transgression of the rules of regular recruitment. The

direction to make permanent- the distinction between regularization and making permanent not having been emphasized in *Piara Singh* (1992) 4 SCC 118 (supra) - was held to encourage the State, the model employer to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete.

34. While advertent to two aspects in *Kesavananda Bharati Sripadagalvaru and Ors. /vs./ State of Kerala and Anr.*,¹⁷ and *Indra Sawhney /vs./ Union of India and Others* (2000) 1 SCC 168, it was emphasized that adherence to the rule of equality in public employment is basic feature of our Constitution since the rule of law is 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 need to comply with the requirements of Article 14 read with Article 16 of the Constitution. While reiterating the said position, it was held that the High Courts acting under Article 226 of the Constitution, should not ordinarily issue direction for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme.

(Emphasis supplied)

35. The question therefore is, whether the appointments of the petitioners under Section 51-B of the old Act and Section 56 of the new Act could be held to be recruitment made regularly and in terms of the constitutional scheme.

36. That brings us to the decision in *Nihal Singh* (2013) 14 SCC 65 (supra). In *Nihal Singh* (2013) 14 SCC 65, the State of Punjab was confronted with a situation in 1980s where large scale disturbance prevailed in the State and the State was not in a position to handle the prevailed situation with available police personnel. Therefore, the State of Punjab resorted to recruitment under Section 17 of the Police Act, 1861, which enabled the State (Police Officers not below the rank of Inspector) to appoint Special Police Officers. On the request made by the public sector banks in Punjab, expressing security concerns, in a meeting held on 24.03.1984, between the Advisor to the Governor of Punjab and Senior Officers of public sector banks, it was decided that Special Police Officers be appointed for the said purposes in terms of Section 17 of the Police Act, 1861.

37. Section 17 of the Police Act, 1861 reads as follows:

"17. Special police-officer.-When it shall appear that any unlawful assembly or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any police-officer, not below the rank of Inspector, to apply to the nearest Magistrate, to appoint so many of the residents of the neighbourhood as such police-officer may require, to act as special police-officer for such time and within such limits as he shall deem necessary, and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with

the application."

38. The petitioners in *Nihal Singh* (2013) 14 SCC 65 were Ex-Servicemen and registered with the Employment Exchange. The petitioners were appointed under such circumstances, with all privileges under the Police Act, 1861. The petitioners were paid Rs.35/- per day by the bank concerned as honorarium from the date of taking charge of the duty. Various persons who were appointed, approached the High Court of Punjab and Haryana from time to time seeking appropriate directions for regularization of their services. Some of the petitioners also sought regularization in the light of the notification dated 23.01.2001. The writ petitions were disposed of by order dated 12.12.2001, directing consideration of the cases of the petitioners in accordance with law and with a direction to pass speaking order. The Senior Superintendent of Police rejected the claims. The aggrieved, once again approached the High Court. The petitions were dismissed in the light of the earlier judgment of the High Court. The High Court had held that by the very nature and purpose of their appointment as such, no occasion arises to warrant such regularization. It was observed that there is no regular cadre for such posts, nor have any particular number of posts been created for this purposes.

39. The Apex Court, while examining Section 17 of the Police Act, 1861 also observed that Section 18 read with Section 17 and the appointment orders, would make it clear that the appellants were appointed by the State in exercise of the statutory power under Section 17 of the Act. The appellants were amenable to the disciplinary control of the State as in the case of any other regular police officers. The only distinction is that they are to be paid daily wages of Rs.35/- (which came to be revised from time to time). Such payment was made by the bank to whom the services of each one of the appellants was made available.

40. The Apex Court proceeded to hold that no doubt the powers under Section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts. But, it was held that the State was not justified to take a defence that after permitting the utilization of the services of a large number of peoples like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. It was observed, 'Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need'. Having considered *Umadevi* (3)2, the Apex Court proceeded to hold that the initial appointment of the appellants therein can never be categorized as an irregular appointment. It was held that the initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. It was held that the appointment made under Section 17 was not arbitrary to the exclusion of other eligible candidates. It required all able-bodied persons to be considered by the Senior

Superintendent of Police who was charged with the responsibility of selecting suitable candidates. The Apex Court further held that the process of selection adopted in identifying the appellants therein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. Though the appointments were not against sanctioned posts, the Apex Court directed that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

41. At this stage, it would be relevant to notice the undisputed facts recorded by the Division Bench in K.Krishna ILR 2003 KAR 2578 (supra).

(i) Appellants were post graduates with Ph.D.

(ii) They were initially appointed as Guest Lecturers and thereafter as temporary lecturers.

(iii) All of them had completed more than three to eight years of service as temporary lecturers, apart from working earlier as Guest Lecturers on contract basis.

(iv) Appellants were initially called 'part time lecturers' or 'guest lecturers' and from 1992-93 onwards, full time 'temporary lecturers'.

(v) All the appellants were appointed pursuant to the applications submitted in response to the advertisement issued in the news papers.

(vi) They were interviewed and their qualifications were verified with reference to their marks cards and other certificates.

(vii) The appellants had discharged and continued to discharge same duties and shouldered same responsibilities as that of regular permanent lecturers.

(viii) Remuneration was initially paid on hourly basis and from 1992 onwards they were treated as full time temporary lecturers on a consolidated salary per month.

42. During the course of these proceedings, this Court had directed the respondent-University to file an affidavit regarding the issuance of advertisements, whether they were publicized in the news papers and on certain other factual aspects. The Registrar of the University had filed an affidavit dated 15.04.2019 admitting that every year the advertisements were published in local news papers and circulated in all departments/colleges of the University. After receiving the applications, interviews were conducted by the Selection Committee constituted under the Chairmanship of the Vice-Chancellor of the University and the orders were issued to selected candidates. It was submitted that "the Mysore University statutes relating to temporary appointments to all posts of teaching and non-teaching staffs in the University" and most specifically clause 5 of the said statute stipulates that the teaching posts shall be filled up after advertisement in the local news papers and also by notifying the vacancies

in the University colleges/ departments/colleges in consultation with the Heads of departments concerned.

43. In the light of the above, the argument of the learned Senior Counsel appearing for the respondent-University that the provisions governing the appointment of permanent lecturers under Section 53 is different from appointment of temporary lecturers under Section 56 and therefore, it cannot be held that the procedure contemplated for appointment of teacher/lecturer has been complied with in the case of the petitioners herein, seems to be far-fetched. It may be true that in the case of appointment of permanent lecturer, advertisement has to be made in a national news paper, while advertisement regarding temporary lecturer may be made in a local news paper. Similarly, selection of a permanent lecturer is to be made by a Board of Selection, comprising of the Vice-Chancellor, experts nominated by State Government and from the panel of UGC, etc. and in the case of temporary lecturer selection and appointment is made by the Vice-Chancellor. However, there is no dispute that the educational qualification and criteria for both the appointments are one and the same and the selection of the petitioners were made by the Selection Committee.

44. The temporary appointments made under Section 56 of the new Act came into force on 13.09.2001. Section 56 reads as follows:

"56. Temporary Appointment: (1) Notwithstanding anything in Section 53, 54, 55 and 57, the Vice Chancellor may make temporary appointment of not more than one year duration to posts of Lecturers and such non-teaching staff as may be specified in the Statutes where such posts are either temporary or appointments to such posts cannot be made in accordance with section 53, 54, 55 and 57 without delay.

(2) The appointments under Sub-section (1) shall be made only against sanctioned posts and in the manner prescribed by the Statutes."

45. A plain reading of Section 56 makes it clear that the appointment of the petitioners was strictly in accordance with law and against sanctioned posts. The petitioners could not have been appointed if they did not possess the requisite qualification. Therefore, this Court proceeds to hold that the appointment of the petitioners from year to year, cannot be termed as irregular or back-door entry.

46. Sri P.S.Rajagopal, learned Senior Counsel appearing for the respondent-University heavily relied upon the decisions of the Apex Court in the case of Brij Mohan Lal /vs./ Union of India and others¹⁹ and Nihal Singh (2013) 14 SCC 65 (supra), to contend that the appointment of the petitioners being under a separate set of Rules than the Rules governing the regular appointment, the procedure adopted for selection and appointment for Regular and Temporary posts being different, the temporary appointees shall not derive any benefit reserved for a regular appointee.

47. As noticed earlier, in the case of Nihal Singh (2013) 14 SCC 65, the appointments made under Section under 17 of the Police Act, 1861 was also different from the provision governing regular appointment. In the case of Brij Mohan Lal (2012) 6 SCC 502 (supra), the appointment was under a Scheme or Project, therefore Their Lordships held that the relief of regularisation of persons appointed against a particular scheme or project were bound to come to an end by efflux of time. Therefore, the direction issued by the State Government to the Officers appointed as Fast Track Court Judges directing such Officers to undertake a written examination for consideration of promotion, was upheld by the Hon'ble Supreme Court. The facts on hand are not similar to Brij Mohan Lal (2012) 6 SCC 502 (supra) and in the opinion of this Court, the appointment of the petitioners herein stands on a higher pedestal when compared to the appointees in Nihal Singh (2013) 14 SCC 65 (supra).

48. Reliance placed on the judgments of the Hon'ble Supreme Court in the case of Nagendra Chandra (2008) 1 SCC 798 and Renu and Others⁷ (supra) on the point that when advertisement was not issued in terms of the prescription, the appointees cannot sustain their appointments, does not impress this Court, since the fact situation in the present case are not similar to those cases. In both those matters, the appointment pertained to regular recruitment and not under any separate provision for temporary appointments. Moreover, in the opinion of this Court in the matter of regularisation, this aspect falls within the category - 'non-compliance of certain procedure which do not go to the root of the appointment' and since 'regularisation' is a term calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments, as observed in Umadevi (3)², the contention of the learned Senior Counsel for the respondent cannot be countenanced.

49. The decision in Principal, Mehar Chand Polytechnic and Another /vs./ Anu Lamba and Others²⁰, was relied upon by the learned Senior Counsel for the respondent-University to contend that the two decisions in Karnataka State Private College Stop-Gap Lecturers Assn. /vs./ State of Karnataka (1992) 2 SCC 29 and Baseruddin.M.Madari /vs./ State of Karnataka 1995 Suppl. (4) SCC 111, which were relied upon by the Division Bench in K.Krishna ILR 2003 KAR 2578 (supra) were declared that they did not lay down any law that services of all adhoc employees are required to be regularised. This contention is also of no avail, since this decision will not be based on K.Krishna ILR 2003 KAR 2578 (supra). Moreover, in Mehar Chand Polytechnic (2006) 7 SCC 161 (supra), it was held that the respondents were unable to demonstrate that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, in that case the appointments were not against the sanctioned posts and the appointments was for a particular Project for providing technical education to the agriculturists.

50. The argument of the respondent that some of the petitioners were appointed

as part-time lecturers having lesser hours of the duty when compared to a regular lecturer and they were free to engage themselves elsewhere, does not find favour with this Court. Such an argument cannot be accepted since, the respondent-University has secured an undertaking at the hands of the petitioners, in the appointment orders that the appointee shall not engage himself/herself in any other Institution or University. There is a specific observation in this regard by the Division Bench in K.Krishna ILR 2003 KAR 2578. Moreover, Part-time appointment is governed by a separate provision viz. Section 55 of the New Act. Admittedly, the appointment of the petitioners is under Section 56 of the Act.

51. On the other hand, the decision of the Apex Court in the case of Malathi Das (Retired) now P.B.Mahishy /vs./ Suresh and others²³ would be useful while issuing directions in this matter. In Malathi Das, contempt petitions were filed before this Court and this Court held the contemnors guilty of commission of contempt and granted them two weeks time to comply with the order in respect of which disobedience was alleged. In H.S.Raghupathi Gowda And Ors. /vs./ State of Karnataka and Others W.P.No.33541/1998, by order dated 10.09.1999, this Court had granted relief to the petitioners, following which W.P.Nos.39117-76/1999 was also allowed and the respondents State Government had implemented the orders by granting regularisation to the petitioners therein. Following the dismissal of the Special Leave Petitions filed by the State, a scheme dated 29.12.2005 was framed by the State Government to implement the order dated 15.12.1999 in Nagaraju /vs./ State of Karnataka W.P.No.39117/1999. By order dated 29.12.2005, 161 persons were regularised. On 08.03.2006, 64 other persons were regularised and thereafter 74 persons were regularised. Some other persons whose services were not regularised moved contempt petitions before this Court. During the course of the contempt proceedings, eight weeks were granted to contemnors to pass appropriate orders. The contemnors rejected the claim of the complainants on the ground that they do not fulfill the conditions for regularisation as laid down in paragraph 53 in Umadevi (3)². The contempt Court, however took note of the fact that the Special Leave Petitions filed by the State Government were dismissed on 21.07.2005, before the decision in Umadevi(3) (2006) 4 SCC 1 and therefore, held the contemnors guilty. The Hon'ble Supreme Court took note of the fact that 55 employees, similarly situated to the respondents therein were regularised on 18.04.2006, after the decision in Umadevi(3) (2006) 4 SCC 1. Therefore, on principles of parity, the Apex Court directed the contemnors to regularise the services of the complainants.

52. The decision in Malathi Das (2014) 13 SCC 249 (supra) assumes significance since the respondent University formulated University of Mysore (Absorption, Regularization of Temporary Full-time/Part-time (Lecturers) Statutes, 2004 and notified the same on 07.02,2007. However, the benefit was restrained to 33 of the appellants in Writ Appeals which were decided in K.Krishna ILR 2003 KAR 2578. More importantly, the regularisation of the 33 appellants in K.Krishna ILR

2003 KAR 2578, came after the decision in Umadevi(3) (2006) 4 SCC 1. In spite of requests and prayers of many of the petitioners herein seeking parity with the others who were appointed under Statutes, 2004, the respondent University rejected their claims on the ground that the Division Bench in K.Krishna ILR 2003 KAR 2578 had directed regularisation of the appellants before the Division Bench only.

53. On going through the directions issued by the Division Bench in K.Krishna ILR 2003 KAR 2578 (supra) this Court is of the opinion that the Division Bench did not intend that the benefit of regularization should be restricted only to the appellants therein. There is no specific direction that the benefit should not be given to any other person or persons who were not before the Court. It is seen from para 33 in K.Krishna ILR 2003 KAR 2578, that the University, when it prepared its draft statutes on 30.03.1998, temporarily proposed to create 94 additional posts of lecturers, as one time creation of posts which will become obsolete on the retirement, resignation, etc., of lecturers absorbed against those posts. Therefore, when there was a need as on 30.03.1998, for 94 additional posts along with 30 vacancies as on that date, the respondent-University could have sought clarification at the hands of the Division Bench, as regards the applicability and extension of benefit of regularization.

54. As held by the Hon'ble Supreme Court, in the case of M.L.Kesari (2010) 9 SCC 247 (supra), the term "one-time measure" as directed in Umadevi (3)2, should be understood in its proper perspective. It was therefore clarified that each department or each instrumentally should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than 10 years without the intervention of the Courts or Tribunals and subject them to a process of verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services. It was also observed that several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook one-time exercise excluding several employees from consideration either on the ground that their cases were pending in Court or due to sheer oversight. After taking into consideration several such aspects, the Apex Court held that the one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of Umadevi (3), are so considered.

(Emphasis supplied)

55. In paragraph 11 of M.L.Kesari (2010) 9 SCC 247, it was held that the object behind the directions in paragraph 53 of Umadevi (3), is two fold. First is to ensure that those who have put in more than 10 years of continuous of service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi(3) (2006) 4 SCC 1 was rendered, are considered for regularization in view of their long service. Second, is to ensure that the departments/instrumentalities do not perpetuate the practice of employing

persons on daily wage/ ad hoc/casual basis for long period and then periodically regularize them on the ground that they have served for more than 10 years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.

56. Therefore, a direction ensues to the respondent-University to comply with the directions of the Constitution Bench in paragraph 53 of *Umadevi* (3)2.

57. But, before embarking upon such directions, this Court is duty bound to look into those cases where the petitioners have put in more than 10 years, but after the decision in *Umadevi* (3). In this regard, the latest decision of the Apex Court in the case of *Narendra Kumar Tiwari* (2018) 8 SCC 238 (supra) should guide this Court. While reiterating the observations in *M.L.Kesari* (2010) 9 SCC 247, Their Lordships proceeded to clarify that the State and its instrumentalities were required to consider the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise-the interest of employees is also required to be kept in mind. It was held that in spite of the Regularization Rules of 2015, some of the employees were denied the benefit on irrelevant considerations and eventually the State had short-circuited the process of regular appointment and instead went on making appointments on irregular basis, which was hardly good governance. As a consequence, the Apex Court held that the Regularization Rules must be given a pragmatic interpretation and those persons who had completed 10 years of service on the date of promulgation of the Regularization Rules, ought to be given the benefit of the service rendered by them.

(Emphasis supplied)

58. On going through the University Of Mysore Regularization of Temporary Full-Time/Part-Time Lecturers Statutes, 2004, though it was assented to by the Chancellor by 27.01.2007, after the decision in *Umadevi* (3)2, the Rules were not issued in compliance of the directions in *Umadevi* (3). On the other hand, the Rules restricted the benefit only to the appellants in the writ appeals in *K.Krishna* ILR 2003 KAR 2578, which was decided on 03.02.2003, much before *Umadevi* (3)2. Therefore, this Court is of the opinion that the Regularization Rules i.e., Statutes, 2004, were not issued in compliance of the directions in para 53 of *Umadevi* (3)2. As held in

M.L.Kesari (2010) 9 SCC 247 and *Narendra Kumar Tiwari* (2018) 8 SCC 238 (supra), the respondent-University is required to formulate a scheme for regularization of all those persons who were appointed as guest lecturers/ temporary lecturers in terms of Section 51B of the old Act and Section 56 of the new Act, who have put in more than 10 years, without the benefit or protection of interim orders of this Court or Tribunal.

59. The respondent-University is therefore required to formulate a new Scheme or Regularization Rules to comply with the directions in paragraph-53 of *Umadevi* (3) 2.

60. It is required to observe here that even after regularization under the Statutes, 2004, which was notified on 07.02.2007, the respondent-University continues to make temporary appointments under Section 56 of the new Act. Section 56 clearly postulates that appointment under sub-Section (1) of 56 shall be made only against sanctioned posts and where regular appointments under Sections 53, 54 and

55 cannot be made without delay. The very fact that temporary appointments are resorted to, even after the authoritative direction of the Constitution Bench of the Hon'ble Supreme Court at paragraph 53 in Umadevi (3)2, which was rendered on 10.04.2006 with a specific direction that the States and its instrumentalities shall frame rules for regularization and complete the process of regularization within six months thereon, reflects poorly on the state of affairs in the respondent-University. The respondent-University is guilty of indulging in the pernicious practice of appointing on temporary basis, when there are vacant sanctioned posts and exploiting persons such as the petitioners, paying them less than half of the salary paid to a regular employee. The respondent-University is guilty of non-compliance of the directions in paragraph 53 of Umadevi (3)2, which required formulation of a scheme of regularization within a period of six months from 10.04.2006, when Umadevi (3)2 was decided. The exploitation of the employees such as the petitioners in not giving them the benefits of regularization and placing the sword of Damocles over their head, continues unabated.

61. It is hereby made clear that the interim orders issued by this Court in these proceedings directing the respondent-University not to relieve or discontinue the services of the petitioners herein shall not be taken as "uninterrupted service of 10 years or more under the cover of orders of the Courts or of Tribunals" as stated in paragraph 53 of Umadevi (3)2. The claim of the petitioners shall not be disregarded or rejected on that ground.

62. In the light of the above, this Court proceeds to pass the following:

ORDER

- 1) These writ petitions are partly allowed.
- 2) The respondent-University shall take steps to regularize as one-time measure, the services of the petitioners herein and all such similarly placed person/ persons, who were appointed under Section 51B of the Karnataka State Universities Act, 1976 and or Section 56 of the Karnataka State Universities Act, 2000, who have put in 10 years or more, immediately before the notification of the rules.
- 3) The respondent-University shall set in motion the process of regularization and complete the same within a period of six months from today.
- 4) The respondent-University may impose a condition that on regularization, if the person/ persons have not acquired the qualification such as NET/SLET as

required under the existing UGC norms, they shall acquire the qualification within a reasonable time from the date of their regularization, as was provided in Statutes, 2004.

5) The petitioners shall not be relieved or discontinued from service till they are considered under the Rules that are to be formulated as directed above.

6) The respondent-University shall follow the roster of reservation while regularizing the services, as far as possible.

In view of the disposal of the main matters, all pending Interlocutory Applications do not survive for consideration and are accordingly disposed of.