

(2003) 02 KAR CK 0099

In the Karnataka High Court

Case No : Writ Appeal No's. 5682-5686, 5688, 5690-5696, 5701-5703, 5966 and 6069 of 1998 and 38, 40, 367, 418-422, 424, 471, 603, 670, 671, 1399, 1442, 2428, 2808, 3347 and 3883 of 1999

K. Krishna

APPELLANT

Vs

University of Mysore and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Karnataka State Universities Act, 1976 — Section 36 (4), 49, 50, 51 (A), 51 (B)

Citation : (2003) 2 KCCR 965

Hon'ble Judges : Kumar Rajaratnam, J;K. Bhakthavatsala, J

Bench : Division Bench

Advocate : R.N. Narasimha Murthy, for Aaren Associates in Writ Appeal Nos. 5682-5686, 5688 and 5696 of 1998, Aaren Associates in Writ Appeal Nos. 471, 424 and 603 of 1999, Patil and Patil, in Writ Appeal Nos. 5701-5703 and 6069 of 1998, Writ Appeal Nos. 38 and 40 of 1999, Krishna S. Dixit, in Writ Appeal No. 5966 of 1998, Writ Appeal Nos. 367, 670, 671, 1399, 1442, 2428, 2808 and 3347 of 1999, S.N. Manjunath, in Writ Appeal No. 5966 of 1998, Writ Appeal Nos. 367, 670, 671, 1442, 2428, 2808 and 3347 of 1999, V. Lakshminarayana, in Writ Appeal No. 3883 of 1999 and R.N. Narasimha for Aaren Associates in Writ Appeal Nos. 418 and 422 of 1999, for the Appellant; S.G. Bhagwan in Writ Appeal Nos. 5701-5703, 5966 and 6069 of 1998, for Respondent 1 and 2 in Writ Appeal Nos. 5682-5686, 5688 and 5696 of 1998, Writ Appeal Nos. 38, 367, 670, 1399, 1442, 2428, 2808 and 3347 of 1999, for Respondent 1 in Writ Appeal Nos. 424, 471 and 671 of 1999, for Respondents 1 and 2 in Writ Appeal No. 40 of 1999, for Respondent 3 in Writ Appeal No. 603 of 1999, for Respondent 4 in Writ Appeal Nos. 418, 422 and 3883 of 1999, A.N. Jayaram, A.G. for Nagarajulu Naidu, High Court Government Pleader for Respondent 3 in Writ Appeal Nos. 5682-5686, 5688 and 5696 of 1998, Nagarajulu Naidu, for Respondents 1, 2 and 4 in Writ Appeal No. 603 of 1999, High Court Government Pleader for Respondents 1-3 in Writ Appeal No. 418 and 422 of 1999, V.C. Brahmarayappa in Writ Appeal No. 671 of 1999, G.K. Bhat, Government Advocate in Writ Appeal No. 424 of 1999 and for Respondents 1-3 in Writ Appeal No. 3883 of 1999, for the Respondent

Final Decision : Allowed

Judgement

Kumar Rajaratnam, J.—The fate of qualified Temporary Lecturers who worked as such in the Mysore University presently unemployed hangs in balance in these Writ Appeals.

2. The learned Single Judge in a hard hitting Judgment held that the Lecturers were not entitled to regularisation and more or less directed that their services be terminated as their appointments were not in accordance with law.

3. We wish to start with the operative portion of the learned Single Judge's order which is under appeal before we deal with the facts of the case. It reads as follows:

Conclusion and Directions

Keeping in view the statutory provisions as noticed above and the law laid down by this Court and the Apex Court, since the Petitioner had been given an ad hoc appointment on contract basis in obvious flagrant and blatant violation of the statutory provisions contained u/s 51A of the Act and the statutes framed thereunder by the Vice-Chancellor against unsanctioned posts and that too, without following the mandatory procedure of recruitment, her initial entry in the services of the University was illegal and as such as laid down by the Apex Court in Ashwini Kumar's case (*supra*), she cannot claim any regularisation. Moreover, permanent appointments can be made only by a duly constituted Board of Appointments as per Section 49 of the Act on following the procedure provided therein. It has to be clearly borne in mind that, under the provisions of the Act, the Vice-Chancellor has not been given any power of making any permanent appointments.

32. For the aforesaid reasons, the writ Petition is dismissed with clear directions that:

(i) the Vice-Chancellor of the University should not make any appointment either on ad hoc or temporary basis unless there are clear vacancies against sanctioned posts and the procedure as laid down under the statutory provisions as noticed above is strictly complied with.

(ii) the State Government must transmit all the statutes pending consideration before it with its comments to the Chancellor within the time frame fixed u/s 36 (4) of the Act.

If at any time hereinafter, it is found that the University authorities or any political or administrative executives have acted in violation of the above law laid down by this and the Apex Court, then they may run the risk of:

(i) being proceeded with committing contempt of this Court for disobedience of the law-Judicially laid down as held by the Supreme Court in the case of *Baradakanta v. Bhim Sen* (AIR 1974 SC 2466)

(ii) they may be saddled with exemplary damages keeping in view the law laid down by the Supreme Court in the case of Common Cause, A Regd. Society Vs. Union of India (UOI) and Others,

(iii) order for prosecution under the Prevention of Corruption Act, 1988 "public servants" within the meaning of Section 2(3) thereof.

33. Let a copy of this order be immediately sent to the Registrars of all the Universities of the State for being placed before respective Vice-Chancellors and the Syndicate for their information so as to ensure that if any appointment is made or continued in violation of the statutory provisions as noticed above, then the same be immediately corrected.

34. A copy of the order may also be made immediately available to Ms. Vidya, learned HCGP, for ensuring the necessary compliance by the State Government.

35. Writ Petition stands dismissed as ordered above, But, without any order as to costs.

4. The facts very briefly are as follows:

All the Appellants were post-graduates with Ph.D and were initially appointed as Guest Lecturers and thereafter as Temporary lecturers in different disciplines. All of them have completed more than 3 to 8 years of service as temporary lectures and apart from working earlier as Guest lecturers on contract basis.

5. The Appellants were initially called as "Part Time Lectures" and sometimes as "Guest Lecturers" and from 1992-93 onwards, full time "Temporary Lecturers". All the Appellants were appointed pursuant to the applications submitted in response to the advertisement issued in Newspaper in 1989 and 1992. They were interviewed and their qualifications were verified with reference to their marks card and other certificates and later on were duly appointed.

6. The Appellants were appointed as Guest Lecturers, Part Time Lecturers or Contract Lectures and they discharged the same duties and shouldered the same responsibilities as those lecturers who were regularly appointed. The remuneration initially paid was on hourly basis prior to 1992 and from the year 1992 onwards, they were treated as Full Time Temporary Lecturers on a consolidated salary of Rs. 2,000/- per month.

7. The order of appointment stipulates that the appointment might be terminated earlier for any other reason vide Annexure-E. The order also stipulate that the appointments are purely temporary and they cannot make any claim for absorption into regular service. An undertaking has also been obtained from all the Appellants, which reads as follows:

Undertaking

1. I understand that my appointment as temporary lecturer is purely on temporary basis and my service may be dispensed with at any time without

notice or without any reason being assigned.

2. I will not stay in any of the hostels anywhere I accept the above temporary appointment on the above said conditions.

8. It is submitted that the Appellants were paid only consolidated salary of Rs. 2,000/- per month. No DA, HRA, CCA and other allowances payable to regularly appointed lecturers, were paid to the Appellants. The Appellants were not entitled to any leave. The Appellants were also not eligible to medical assistance and other benefits like Bicycle advance, festival advance, scooter advance or car advance. The Appellants were also not eligible to contribute to the provident fund and other benefits that would normally be available to regularly appointed lecturers. Thus they are denied the legitimate normal benefits available to the regular employees of the University.

9. As if these deprivations were not enough, the Appellants were periodically, retrenched and re-appointed, so as to deny them continuity of service and also deny regular scale of pay. Every year, they were terminated by the end of March and were re-appointed at the beginning of the Academic Year-July or August. Thus, they were terminated immediately before vacation and re-appointed after vacation thereby denying them salary during vacation.

10. It was submitted that these artificial breaks and denial of job during vacation had deprived the Appellants of their right to life and livelihood.

11. It was submitted that by this ingenious bureaucratic device, the Respondents have denied the Appellants their regular appointment and regular time scale of pay and other beneficial service conditions.

12. It was submitted that the Universities being the organ of the State cannot abuse or misuse the power granted under Sections 49 and 51 (A) and (B) of the Universities Act. Though Section 51 (B) empowers the Vice-Chancellor to make temporary appointment of not more than six months duration to the posts of lecturers, it does not empower the Vice-Chancellor to exercise the power in an arbitrary and authoritarian fashion. The power has to be exercised consistently with the object sought to be achieved. Making appointment regularly for six months, terminating them at the end of six months and again re-appointing them, would be totally inconsistent with the powers vested with the Vice-Chancellor.

13. Many of the Appellants are over aged and they have family. They have served the University for long years without any blemish as temporary lecturers.

14. It was submitted that the question of regularisation of adhoc and temporary teachers who have worked for 3 years with artificial breaks, has been the subject matter of the litigation time and again in this Court and the Supreme Court.

15. The Supreme Court in the case of Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, , after considering in

extenso, the situation observed that the problem was created by the State due to absence of effective provision and due to defective implementation of the provision. The tendency to allow the sword or termination hanging on the head to strike periodically once in three months or six months was deprecated by the Supreme Court. The Court also observed that there could be no justification whatsoever for paying a teacher a fixed salary adopting a different method for payment for a regular teacher. To put an end to this practice of Adhocism, the Supreme Court issued the following directions.

Provision of giving a break to be put an end to and a person appointed temporarily should also be paid the salary that is admissible to the regularly appointed teacher. Service of temporary teachers who have worked for 3 years including the break, should not be terminated and they should be absorbed as and when vacancies arise. Such teachers should be continued in service during vacations.

16. In spite of these wholesome salutary directions, by the supreme Court the Respondents continued to indulge in adhocism resurrecting the right of the employer to hire and fire at will.

17. It was submitted that based on various judicial pronouncements, the Kuvempu University, Mangalore University and Bangalore University where such practice of adhoc/temporary appointment was in vogue, took the decision to regularise the services of temporary lecturers after appointing a sub-committee and obtaining a report.

18. It was submitted that even the Mysore University considered the case of non-teaching staff and other daily wages staff of the University and regularised their services. However, in the case of lecturers, though the matter was considered by the University Syndicate on 6.5.1995 and 24.2.1996, no decision was taken on the subject and matter was later, deferred. We shall deal with this matter a little later in Judgment.

19. The University of Mysore invited applications for filling up of the posts of lecturers by its notification No. ETB/229/95-96 dated 27.11.1995, a copy of the notification is enclosed as ANNEXURE "P". Thus, other Universities in Karnataka have taken effective action to regularise the services of temporary lecturers, no decision has been taken by the Mysore University, while on the other hand it proposed to fill up the post available by open advertisement without considering the plight of the Appellants.

20. It is at this stage the Appellants approached the learned Single Judge seeking regularisation of their appointment as lecturers in the 1st Respondent-University.

21. As stated earlier the learned Single Judge dismissed all the writ Petitions. The reasoning of the learned Single Judge was that no temporary appointment of lecturers can be made even u/s 51 (B) of the Karnataka State Universities Act,

1976 (hereinafter referred to as the "Act") unless such appointment is made in the manner prescribed by the Statute.

22. Section 51 (B) of the Act reads as follows:

51 (B): Temporary Appointment:(1) Notwithstanding anything in Sections 49 and 50 the Vice-Chancellor may make temporary appointments of not more than six months duration to posts of lecturers and such non-teaching staff as may be specified in the Statutes provided such posts are either temporary or appointments to such posts cannot be made in accordance with Sections 49, 50 and 51A without delay.

(2) The appointments under Sub-section (1) shall be made in the manner prescribed by the Statutes.

23. Taking a cue from Section 51 (B) of the Act, the learned Single Judge relying on Ashwani Kumar and Others Vs. State of Bihar and Others, dubbed the entire appointment of the Appellants as back door appointment.

24. It appears that at the time when they approached the Court they were still serving as temporary lecturers and the learned Single Judge on 6.11.1996 passed the following interim order:

The Services of the Petitioners shall not be terminated until the Sub-Committee appointed by the Syndicate submits its report and further action shall be taken in pursuance of the same.

25. In another connected writ Petition the interim order was passed on 31.3.1997 staying the termination of their service. Pursuant to the said interim orders all the Appellants continued as temporary lecturers.

26. All the writ Petitions were dismissed on 16.11.1998 by Bharuka, J. By the order dated 16.11.1998 the learned Single Judge while dismissing the writ Petitions gave clear directions that the University should not make any adhoc or temporary appointments unless there were clear vacancies against sanctioned post.

27. The learned Single Judge also pronounced that any violation of such procedure will result in committing contempt of the Court.

28. On the very same day on 16.11.1998 by an order bearing No. ET. 8/678/97-98 the University of Mysore terminated all the Appellants with immediate effect, which reads as follows:

Pursuant to the orders dated 16.11.1998 passed by the Hon''ble High Court of Karnataka, the services of the following temporary full time/temporary part-time lecturers, working in various P.G. Departments/Constituent Colleges/P.G. Centres are terminated with immediate effect, and consequently they are relieved of their duties in the University of Mysore on the afternoon of 16th November, 1998.

29. Consequent to the order of the learned Single Judge 102 writ Petitioners

were relieved of their duties. Out of 102 writ Petitioners only 36 lecturers have challenged this order and who are Appellants before this Court.

30. The Appellants who were Petitioners before the learned Single Judge it appears got more than what they had asked for. The prayer in the writ Petitions was that they should be regularised but what they got was a termination order on the same day the Judgment was pronounced, apparently on the directions of the learned Single Judge.

31. We are constrained to state that it is not clear whether the Petitioners who filed the writ Petitions were better off in filing the writ Petitions and whether they would have continued in service as temporary Lecturers if they had not filed the Writ Petitions. It is clear from the narration of facts in chronological order that the termination of the service of the Appellants was only pursuant to the directions given by the learned Single Judge as can be seen by the termination order issued by the University to which we have referred to earlier.

32. Be that as it may. There is another aspect of this matter which requires our anxious consideration. In fact it is not in dispute that the University prepared a draft statute.

33. The University prepared the Draft Statute on 30.3.1998 called "University of Mysore" (Absorption/Regularisation of Temporary full-time/part-time Lecturers) Statutes, 1998. It was made u/s 36 (1) of the Karnataka State Universities Act, 1976.

34. Under the Statute, it was 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 these posts.

35. It was made after considering the fact that there were 30 vacancies (10 Post-Graduate + 20 Under-Graduate) against 124 lecturers working.

36. By the letter in No. ET 8:50/95-96 dated 18.5.1998, the University transmitted three copies of the same to the State Government for submission to the Chancellor for assent as required u/s 36 (4) of the Act.

37. Section 36(5) of the Act indicates that no statute passed by the Senate shall have validity until assented to by the Chancellor.

38. In reply to the letter No. ED 13 UMS 98, dated 12th June, 1998, seeking certain information necessitating the making of the Statute, the University by its letter dated 24.6.1998 furnished the required information to the Government.

39. Under the signature of the Under Secretary to Government, Education Department, with regard to the subject: "Statute raising to regularisation of the temporary full-time Part-time Lecturers in Mysore University", in the letter No. ED 13 UMS 98, dated 7.8.1998, states as follows:

There is total embargo on the creation of new posts vide Circular No. FD 3 SRP

98, dated 14.2.1998. In view of it, new posts of Lecturers cannot be created just for the sake of the regularisation of the temporary Lecturers.

If the proposed Statute is assented then it indirectly postulates creation of 94 posts of Lecturers in Mysore University with a recurring expenditure of Rs. One Crore per annum. In view of mobilization crunch and financial crisis, it is impossible to provide such a huge additionality either under the Plan outlay or under the Non-Pan outlay.

40. In the above circumstances, the Chancellor withheld his assent to the above draft Statute relating to regularisation of the temporary full-time/part-time lecturers in Mysore University u/s 36 of the KSU on the ground of financial crunch.

41. Ultimately the draft statute could not be made into a statute on account of the State's obstinance in not making the necessary financial grants to the Universities. Apart from financial crunch which was pleaded by the learned Advocate General there was nothing on record to show that there was no work load when the Appellants were originally appointed and continued in service as temporary lecturers between 3 to 8 years.

42. It is a crying shame and sad state of affairs that fully qualified lecturers selected by the University on the basis of a public advertisement and fully qualified at the point of entry should be thrown to the streets without any succour or alternative employment. Most of the Lecturers are over aged to get any other employment.

43. It is the teachers who make a Nation strong and vibrant. No Nation can survive, if qualified teachers are unemployed more so after being employed for a long time and then their services being terminated for no fault of theirs.

44. The Supreme Court in similar circumstances in the stop-gap lecturers case and in other pronouncements which we shall deal with a little later in our Judgment, had directed the authorities whether it is the State or University to regularise their appointment as and when regular vacancies arose and not to terminate them in the meanwhile. In those cases where there are subsequent requirement of other qualifications, time was granted to the lecturers to acquire subsequent qualification within a limited time.

45. There can be no dispute that the work load was there for each of the Appellants when the appointment was made. In fact the University has clearly stated that these appointments were made only because there was work load. Apart from this the University itself realised that the lecturers were kept far too long as adhoc appointees and required to be regularised.

46. It is only in these circumstances a draft statute was sent by the Syndicate of the Mysore University to be approved by the Chancellor.

47. Regretfully the Chancellor did not approve the draft statute only on the

question of financial constraint. Financial constraint can never be a consideration for regularising lecturers on the basis of work load considering that they had put in about 8 years of service as stop-gap lecturers.

48. It is not known how a separate budget was allotted for the payment of salaries for the lecturers, who were in service as stop-gap lecturers. The same method will have to be evolved by the University and the Government and the lecturers will have to be given their jobs back.

49. Mr. Bhagwan, learned Senior Counsel for the 1st Respondent- University does not for a moment deny that the Appellants were appointed pursuant to the applications made in the Newspaper in 1989 and 1992. The Appellants were interviewed and their qualifications were verified. They were appointed on a consolidated salary of Rs. 2,000/- per month right from 1992 to 1997. Some of the Appellants are working in Yuvaraja's College and others were working in Maharaja's College of Mysore University.

50. Mr. Jayaram, learned Advocate General appearing for the State submitted that the Appellants were originally appointed as temporary-Stop-gap lecturers in the 1st Respondent-University, but contended that it was specifically made known to the Appellants that their appointments were purely temporary to cope with the work load and was not made against sanctioned vacancies.

51. It was further submitted that the Appellants cannot claim any right to continue in service as stop-gap lecturers since they were appointed on temporary basis. It was also submitted that regularisation of temporary lecturers would become a bad precedent.

52. However, in fairness to the learned Advocate General, he submitted that the appointment of the Appellants as lecturers without it being ratified by a Statute as required u/s 51 (B) of the Act need be gone into, since the Appellants were appointed on the basis of applications called for and have served the Universities for nearly 8 years as a stop-gap lecturers.

53. The main submission of the learned Advocate General was that the Syndicate of the Mysore University had resolved to recommend to the Chancellor regularisation of all part time stop-gap lecturers who had put in 3 years of service or more without taking into account the break.

54. This recommendation could not be made into a Statute, since the Chancellor did not give assent to the recommendation of the Syndicate on account of a financial crunch.

55. If the Chancellor had given such an assent the Appellants would not have been before the Court, since they would all been regularised as per the recommendation of the Syndicate.

56. Mr. Narasimha Murthy, learned Senior Counsel for the Appellants relying on the Judgment of the Supreme Court in The Dharwad Distt. P.W.D. Literate Daily

Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., submitted that the Supreme Court gave a time frame for regularisation of Daily rated employees. The Court struck a balance between the obligations of the Court to individualize justice to a given situation and the interests of the State which controls the funds. The Supreme Court held that the money that flows into the consolidated fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not the beneficiary. That is an incident of taxation and a necessary concomitant of living within a welfare society.

57. Striking a balance between the interest of the State and the interest of the daily rated employees, who had worked for many years, the Supreme Court gave certain guidelines directing the State of Karnataka to regularise or absorb the daily rated employees in a phased manner.

58. In All Manipur Regular Posts Vacancies Substitute Teachers" Association Vs. State of Manipur, , the difficulties of the State were also brought to the notice of the Court and the Court struck a balance between the interest of adhoc Teachers and the constraints of the State and pronounced as follows:

Mr. Venugopal, learned senior Advocate appeared for the State. He also explained the genesis of the case and the problem of the department for regularising the services of all the substituted teachers. Having heard Counsel on both sides, it appears to us that it is necessary to make the following order to avoid further litigation and also to avoid seemingly conflicting interim order issued by the High Court.

All substituted/adhoc teachers who have put in five years of service or more as on October 1, 1990 shall be regularised without any DPC. This regularisation would be subject to their possessing the required qualifications at the time of their initial appointment.

The substituted/ad hoc teachers who have rendered less than five years of service as on October 1, 1990 shall be allowed to appear before the DPC for selection. The DPC shall be constituted exclusively for them within three months from today. Those who are selected by the DPC shall be regularised immediately thereafter.

Twenty-three substituted/ad hoc teachers who have been already selected by the DPC shall be regularly appointed forthwith retaining their present seniority.

All the substituted/ adhoc teachers who are in service as on today shall be allowed to continue in service till the DPC declares its result of the selection. The services of those who do not appear before DPC or could not be selected by the DPC could be terminated unless their services are required for a further period.

It is said that the DPC earlier convened has selected some persons for direct recruitment. If there are additional vacancies in addition to those which are being

occupied by the substituted/ad hoc teachers, they may straightaway be appointed against those vacancies and the remaining if any may be appointed after the DPC completes the process of selection of substituted/ad hoc teachers for regularisation depending upon the vacancy position.

As to the seniority between the direct recruits and the regularised candidates, we make it clear that the direct recruits other than those mentioned in para (3) above, shall be ranked below all the regularised candidates.

This order shall govern all those who are in service as substituted/ad hoc teacher. It shall also govern all pending litigations before the High Court or any other tribunal. The concerned parties shall move the High Court or the tribunal to disposed of the pending litigations accordingly.

59. In State of Haryana and others Vs. Piara Singh and others etc. etc., the Supreme Court had occasion to deal with certain directions given by the High Court with respect to large number of appointments made to Class III and IV servants in the State of Punjab and Haryana on ad hock basis without reference to Public Service Commission or the Subordinate Selection Board and without adhering to employment exchange requirements. The Supreme Court pronounced that ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions. 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. The Court further held that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of unemployed persons, the State must be a model employer. The Court did not find favour with respect to a direction given by the High Court that ad hoc or temporary employees continued for more than a year should be regularised. The Court held that direction has been given without reference to the existence of a vacancy. There must be a presumption that there is a need for regular post. Such presumption may be justified only when such conditions exist. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. Further, the Court has held that when a person belonging to a particular category continues over a number of years in services they have right to claim regularisation and the authorities are under obligations to consider their case for regularisation in a fair manner keeping in view the principles enunciated by the Court. No, blanket direction can be given, but where a person continues in service for a fairly long spell, say two or three years there is a presumption that may arise that there is a regular need for his service. Keeping those principles in mind, the Supreme Court in Piara Singh's Case moulded the relief based on equity. The Supreme Court gave certain guidelines with regard to ad-hoc or temporary employees.

60. We felt it appropriate to extract the guidelines:

Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.

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 employees by a regularly selected employees 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.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

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

The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with out observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

61. the Supreme Court in 1992 Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka (AIR 1992 SC 667) referred to earlier, the Supreme Court has cautioned the Court not to lose sight of the fact that the

Teachers who have been in the temporary employment and selected against a permanent vacancy and against a work load would be entitled to seek regularisation. The Supreme Court has pronounced as follows:

Para-7: So far these Petitioners and teachers similarly situated are concerned, it could not be disputed that many of those teachers who appeared for selection in pursuance of the High Court order secured sufficiently high marks but they could not be regularised because the vacancies are said to be reserved. But what has been lost sight of is that Petitioners are seeking regularisation on posts on which they have been working and not fresh appointments, therefore, they could not be denied benefit of the High Court's order specially when no such difficulty was pointed out and it was on agreement by the Respondents that the order was passed. No material has been brought on record to show that any action was taken prior to decision by the High Court against any institution for not following the reservation policy. To deny therefore the benefit of selection held on agreement by the Respondents is being unjust to such selectees. Further the State of Karnataka appears to have been regularising services of ad hoc teachers. Till now it has regularised services of contract lecturers, local candidates, University lecturers, Engineering colleges lecturers etc. It may not furnish any basis for Petitions to claim that the State may be directed to issue similar order regularising services of teachers of privately managed colleges. All the same such policy decisions of government in favour of one or the other set of employees of sister department are bound to raise hopes and expectations in employees of other departments. That is why it is incumbent on governments to be more circumspect in taking such decisions. The Petitioners may not be able to build up any challenge on discrimination as employees of government colleges and private colleges may not belong to the same class yet their claim cannot be negated on the Respondents' stand in the counter affidavit that the regularisation to temporary teachers who have not faced selection shall impair educational standard without explaining the effect of regularisation of temporary teachers of University and even technical colleges. Such being the unfortunate state of affairs this Court is left with no option but to issue following directions to Respondents for not honoring its commitments before the High Court and acting contrary to the spirit of the order, and also due to failure of government in remaining vigilant against private management of the college by issuing timely directions and taking effective steps enforcing the rules:

Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.

If regular selections have been made the government shall create additional posts to accommodate such selected candidates.

The teachers who have undergone the process of selection under the directions of the High Court and have not been appointed because of the reservation policy of the Government be regularly appointed by creating additional posts.

From the date of Judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post.

Such teachers shall be continued in service even during vacations.

62. The Stop Gap Lecturers" case was referred to in Baseruddin M. Madari v. State of Karnataka . This case related to appointment of stop gap lecturers in the University and the law laid down in the Stop Gap Lecturers case was followed even with respect to Teachers appointed by the University. In Baseruddin M. Madari's case, the Court, in the facts and circumstances of that case, held that the services of lecturers who worked for 3 years including the break shall not be terminated and they shall be absorbed in regular service as and when the vacancies arise. The Supreme Court following the Stop Gap Case gave similar directions with respect to adhoc appointments.

63. In State of Karnataka and Another Vs. B. Suvarna Malini and Another etc., , the Court directed the State Government not to insist on qualifications which were subsequently prescribed for entry into service. However the part time Lecturers were given time to complete the necessary qualification while in service. The Supreme Court in Suvarna Malini's case pronounced as follows:

9. From the materials on record, it appears that the State Government has been regulating the mode of appointment of Part- time Lecturers and it is not correct that there has been no process of selection before such appointment of Part-time Lecturers. Even though the Selection had not been made by the Public Service Commission, yet there was a process of selection and it further appears that unqualified people were not being appointed as Part-time Lecturers. Part-time Lecturers having formed a class by themselves and for some reason or the other, they having been deprived of the benefits of the earlier directions of this Court on account inaction on the part of the State Government, the matter was re-examined by a Committee of experts as to how best, the services of these Part-time lecturers can be utilised and at the same time, there will be no dilution in the quality of teaching nor can there be any infraction in the minimum qualification necessary for appointment as a lecturer. The concept of equality before the law does not involve the idea of absolute equality among human beings which is a physical impossibility. All that Article 14 guarantees is a similarity of treatment contradistinguished from identical treatment. Equality before law means that among equals the law should be equal and equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though, they are the same. It of course means denial of any special privilege by reason of birth, creed or the like. The legislature as well as the executive Government, while dealing with diverse problems arising out of an infinite variety of human relations must of necessity have the power of making special laws, to attain any particular object and to achieve that object, it must have the power of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to

discrimination. when the Absorption Rules are examined from the aforesaid standpoint and when we consider the circumstances under which the said Rules were made to solve a human problem and that the Rules made were put to objection to the general public and even the Public Service Commission was consulted and finally was (sic were laid) before the State Legislature to have their concurrence, we are of the considered opinion that the High Court committed an error in striking down the Rules on the ground that they were discriminatory. When this Court deprecates the regularisation and absorption, when it comes to the conclusion that such regularisation and absorption, has become a common method of allowing back-door entries and then regularising such entries, it is not that in every case, the Court would be justified in striking down the process of absorption or regularisation, more so when such absorption has been made as a legislative measure and that also as a one-time measure, and at the same time insisting upon the essential qualification to be duly complied with, by the persons intended to be absorbed on regular basis. In the aforesaid premises, we have no hesitation to come to the conclusion that the Tribunal as well as the High Court committed serious error in striking down the impugned Absorption Rules. We, therefore, set aside the Judgment of the Tribunal and the High Court and allow these appeals. While we hold the Absorption Rules to be valid, we would further direct that the State Government must insist upon the candidates to pass the NET test, as required by the University Grants Commission within the period of three years and it is only on passing of such test, the absorbed employees will be entitled to the scale of pay, available for the regular qualified lecturers. Failure on their part to pass the NET test would debar them from being absorbed and regularized.

64. It is clear that no two cases can be identical. However the pronouncements of the Supreme Court indicated that the Appellants have a right to continue as part time Lecturers till they are regularised if they have been appointed as Stop Gap Lecturers for a sufficiently long period of time and if qualified at the point of entry and against a work-load. From the pronouncements of the Supreme Court, it is clear that the Appellants who had worked for a period of more than three to eight years are entitled to the relief. It is not in dispute that they were qualified when they were appointed, though the appointments were not made strictly in accordance with the Statute. The recruitment was conducted in a fair and open manner by way of public advertisement and subsequently followed by interviews of the applicants and only the meritorious candidates were selected and appointed. There is no question of mala fide in their appointments or malpractice in getting appointed. They were appointed against the work load and continued for a period of 3 to 8 years. It is nobody's case that the Appellants were not qualified at the time of their appointment. It is the case of the University that there was work-load against which the appointments were made in a transparent way after calling for applications in the Newspapers.

65. The Supreme Court has pronounced on the concept of "Equitable Estoppel" in the Stop-gap case.

66. On these aspects we do not see much difference between the Stop-Gap case and the facts before us. The lecturers who were appointed on the basis of interviews conducted by the University on public advertisement in the Newspapers and selected on merit and working against the work load for a period of 3 to 8 years have legitimate expectancy to be absorbed as regular lecturers and cannot be snuffed out and thrown to the streets.

67. As stated earlier, many of the lecturers are overaged and cannot seek alternative appointment.

68. On a perusal of records, it is not in dispute that the appointments of the Appellants were made in pursuance of the extra work load that came into existence due to the establishment of two new Post-Graduate Centers Mandya and Hassan during 1992-93 and the introduction of 10 new Masters Degree Courses. The posts fallen vacant could not be filled by regular appointments even to this day. Their appointments were necessary and conducive on account of the work load of the University.

69. It appears to us that despite there being workload and despite the university wanting to regularise these posts, the only ground on which the State recommended to the Chancellor that assent should not be given is because of the financial crunch.

70. In identical circumstances, it was submitted by Mr. Bhagawan that the stop-gap lecturers of Kuvempu, Bangalore and Mangalore University were regularised on the basis of the Chancellor giving an assent to the recommendation of the Syndicate. We fail to see why the Appellants are given such step-motherly treatment.

71. We see no difference between the stop-gap lecturers who are before us and those lecturers who were regularised in other Universities.

72. It remains the responsibility of the State Government to provide funding to the University, keeping in mind their particular needs. Education is a primary goal of a "Socialist" State and the State Government cannot shy away from its responsibility by posing the excuse of financial constraints. A balance needs to be struck between the needs of the people and the limitations of the State's purse.

73. This is one of those critical cases where neither the University nor the State Government have any difficulty in retaining the Appellants as Lecturers. The University certainly had no difficulty for a period of 3 to 8 years in keeping the Appellants as adhoc lecturers. The State had also then no difficulty in finding the resources to pay for the lecturers during that period.

74. Accordingly, the order of the learned Single Judge is set aside.

75. In the fact and circumstances of the case, there shall be a scheme formulated for reinstating the Appellants in their respective disciplines with the following directions:

(i) All the Appellants who have completed 3 years of continuous service with or without break, if fully qualified at the point of entry and who are appointed pursuant to the advertisement in the Newspaper shall be reinstated within a period of four weeks from the date of receipt of this order;

(ii) Till their claims for regularisation are considered by the University and till the Draft Statute is re-considered by the Chancellor, the Appellants shall be paid a consolidated sum Rs. 5,000/- per month. The Appellants will not be entitled to continuity of service on backwages, but, however, will be given weightage and preference at the time of regularisation if eligible for regularisation;

(iii) The State Government is directed to consider re-submitting the Draft Statute for regularisation of Appellants submitted by the Syndicate (Draft Statute) preferably without reference to the financial crunch as was done in Kuvempu, Bangalore, Mangalore, and other Universities and the Chancellor is requested to consider the recommendations made in the Draft Statute of the University as expeditiously as possible, if re-submitted by the State Government in accordance with law.

(iv) In those cases where any subsequent qualification is required to be completed by the Appellants, the Appellants shall be given a period of three years to complete the necessary subsequent qualifications. These ad hoc arrangements shall continue till the Appellants are considered for regularisation in the regular vacancies;

(v) The State and the University shall continue to pay the salary as stipulated by this Court on the same basis as was done by the University and the State earlier while they were employed as Stop-Gap Lecturers for a period of 3 to 8 years.

76. With the above directions, these writ appeals are disposed of and the interim order passed by this Court with regard to the back-log vacancies shall stand dissolved. We place on record the valuable assistance rendered by Mr. Bhagawan. learned Senior Counsel for the University.

77. Swamy Vivekananda said that "Education is the manifestation of perfection already in Man".