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(2004) 08 AP CK 0097

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 8664 of 1998, 581 of 1999, 3700 of 2003 and 2564 of 2004

S. Karunakar Reddy — APPELLANT

Vs

Registrar, Osmania University and Others — RESPONDENT

Date of Decision : 27-08-2004

Acts Referred:
Andhra Pradesh University Act, 1991 — Section 43

Citation : (2004) 6 ALD 119 : (2004) 6 ALT 479 : (2005) 104 FLR 8

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : A. Rajasekhar Reddy, Deepak Bhattacharjee, SC for Osmania University, Government Pleader for Higher Education, S. Ramachander Rao for L. Ravichander, J.R Manohar Rao, L. Prabhakar Reddy, Sooramprabhakar Reddy, G. Pedda Babul, K.R. Prabhakar, S.V.R. Subrahmanyam, A. Sudershan Reddy, V. Hari Haran, K. Ramakanth Reddy, C. Rajasekhar Reddy, O. Ramesh, Kalyan Rao Joshi, Modali Eswara Prasad and T.S. Harinath, SC for Sri Venkateswara University, for the Appellant;

Judgement

V. Eswaraiah, J.—The learned Counsel appearing for the petitioners in this batch of writ petitions agreed that since the common question that falls for consideration is one and the same in all of them, they may be disposed of by a common order. The petitioners have filed these writ petitions to direct the respondents to regularize their services as Lecturers in the respective colleges with all consequential benefits.

2. Learned Counsel further submitted that the petitioners are entitled for regularization of their services by giving effect to the orders of the Government in G.O. Ms. No. 221 dated 20-6-1995. It is stated that the said orders were issued for regularization of the Part-Time Lecturers/ Junior Lecturers working in the Government Degree/Junior Colleges and therefore, they are also entitled for the benefits of the said orders. It is further submitted that they are fully qualified to hold the posts of Lecturers and they have been working since 1995, but the

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respective colleges have been illegally appointing them for every academic year only by dispensing with their services at the end of the academic year, is illegal, arbitrary and unconstitutional and to direct the respondents to regularize their services.

3. Counters have been filed on behalf of the respondents stating that the petitioners are not entitled for regularization of their services as Lecturers in terms of G.O. Ms. No. 221, dated 20.6.1995. Government issued the said G.O for regularization of the services of part-time Lecturers in Government Degree/ Junior Colleges only on certain conditions. Therefore, the Government order is not applicable to the case of the University Lecturers as the recruitment procedure is different for appointment of Lecturers in the University and Government Degree Colleges. There is no category of Junior Lecturers in the University or its constituent colleges. University is an autonomous body and has its own Statutes, Ordinances and Regulations. Therefore, the said G.O. is not applicable to the case of the petitioners.

4. Mr. S. Ramachandra Rao, learned Senior Counsel appearing for the petitioners, has advanced main arguments in the batch of writ petitions and submitted that all the petitioners in this batch are similarly situated to that of the respondents in the batch of W.A. No. 764 of 1998, whose writ petitions were allowed and aggrieved by the same, the Osmania University filed the said batch of writ appeals granting certain reliefs to them and therefore, the petitioners herein are also entitled for the same relief, as was granted by the Division Bench consisting of the Honourable Sri Justice Bilal Nazki and the Honourable Sri Justice L. Narasimha Reddy, in W.A. No. 764 of 1998 and Batch dated 11.9.2002. It is further stated that the petitioners are being treated as bonded labour and the University is getting regular grants from the University Grants Commission and the matching funds from the State Government and there are sanctioned posts. The petitioners were duly selected by the Selection Committee and the respective colleges of the University are taking regular work from them, and therefore, they are entitled for regularization of their services. The first petitioner in W.P. No. 35439 of 1998 is working since 1985 and his date of birth is 4.6.1954, he completed his M.A. in 1979, M.Phil in 1984 and Ph.D in 1988. Similarly, the other petitioners are also qualified for regularization of their services and they have been working from the date of their initial appointment orders by dispensing with their services during the summer vacation. Instead of regularization of their services, part-time arrangements have been made, engaging the services of the petitioners, with a view to deprive the petitioners from regularization of their services.

5. He further contends that the respondents in W.A. No. 764 of 1998 and batch are also similarly situated and the appointments of the petitioners and the respondents in the said writ appeal are similar in nature and therefore, petitioners are entitled for a similar direction.

6. It is further submitted that in the second batch of writ petitions, W.P.No. 6469

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of 2001 and batch, dated 21.10.2003 disposed of by a Division Bench consisting of the Honourable Sri Justice B. Sudershan Reddy and the Honourable Sri Justice K.C. Bhanu, similar direction was issued, but the last sentence of the operative portion of the judgment as regards the right of the University to terminate the contract of any such Assistant Professor etc., by invoking covenants in the contract with a better qualified and more suitable person for entrusting with teaching assignment is contrary to the earlier orders of the Division Bench and this requires to be referred to a Division Bench. 6. It is further submitted that the last selections were made in 1987 and no recruitment took place pursuant to the notifications issued in 1989 and 1994 and therefore, the petitioners are made to work on contract basis as against the regular vacancies and as they arc fully qualified and selected by the Selection Committee, the action in continuing them on contract basis is illegal and it is only to deprive them from regular appointment.

7. Learned Senior Counsel for petitioners submitted that the Division Bench consisting of the Honourable Sri Justice B. Sudershan Reddy and the Honourable Sri Justice C. V. Ramulu, disposed of W.A.No. 1261 of 1999 dated 26. 3.2003 following the earlier order of Division Bench in W.A. No. 764 of 1998 dated 11.9.2002 and therefore, all the petitioners are also entitled for the same relief as was granted in W.A. No. 764 of 1998. A perusal of the said judgment makes it clear that the said order was also an agreed order as it was squarely covered by the Division Bench judgment of this Court in W.A. No. 764 of 1998. Therefore, the said writ appeal is disposed in terms of the judgment in W.A. No. 764 of 1998 and Batch. Therefore, I am of the opinion that the said judgment has no application though the facts of this case are similar to the facts of the writ appeal with some difference, but the petitioners are not entitled for the same relief as was held in W.A. No. 764 of 1998, as it was an agreed order.

8. Learned Senior Counsel appearing for petitioners also relied on judgments of Apex Court in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, and Baseruddin M. Madari v. State of Karnataka, in support of his contention that the Ad hoc teachers of universities appointed for small periods, continuing to work for several years are entitled for regularization. A perusal of the said judgments has no application with regard to the recruitment and regularization to be made by the universities in the Universities Act, but those Ad hoc appointments were made by the State Governments, as the procedure of appointment by the State Government is different from that of the University and therefore, I am of the opinion that the above decisions have no application to the facts of the case.

9. On the other hand, Mr. Deepak Bhattacharjee, learned Counsel appearing for the University and the Government Pleader appearing for Higher Education and on behalf of the State, stated that orders passed in W.A.No. 764 of 1998 and Batch is restricted to the parties therein only and the said order dated 11.9.2002 was an agreed order and therefore, the petitioners are not entitled for the same

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relief. The judgment in the said writ appeal is applicable only to the said nine persons and therefore, this batch of writ petitions is not covered by the judgment in the said writ appeal. It is stated that appointment orders were issued with a condition that the appointment would not confer any right for absorption or regularization of the petitioners in the University services. It is also further clarified that the appointment was not a permanent assignment. The appointment of the petitioners as Part-time Lecturers or as Academic Consultants did not confer any right for absorption as Lecturers in the University services. The petitioners were not selected by any duly constituted Selection Committee as provided u/s 43 of the Andhra Pradesh Universities Act, 1991 (for short ''the Act''). The appointment of each of the petitioner was for a specific period only and the remuneration was paid taking into consideration the workload either for a lecture or on consolidation remuneration basis. The petitioners do not have any right to seek regularization as a matter of right.

10. It is stated that there is no scheme for regularization under which the petitioners are seeking regularization. The relief sought for is contrary to the provisions of the Act. It is further submitted that regularization of part-time/ad hoc/stop-gap appointees or academic consultants as Lecturers may affect the teaching standard of the University and the output of the students at large. University imparts education that lays foundation of wisdom. The hopes and aspirations of the country depend on its education. Proper and disciplined functioning of educational institutions should be the hallmark. An ad hoc arrangement for teaching is made on account of shortage of teaching staff. The above arrangement did not confer any right on the petitioners for claiming regularization. The petitioners were not selected by any constituted Selection Committee in terms of Section 43 of the Act. Without any budgetary support as against the vacancies the petitioners are not entitled for regularization.

11. It is further submitted that the University does not have any right to regularize any part-time or ad hoc member of the teaching staff or any academic consultant without prior permission of the Government in terms of the Section 49 of the Act. The order in W.A. No. 764 of 1998 and batch dated 11.9.2002 is an agreed order and therefore, the petitioners are not entitled for the same relief. It is further stated that regularization of their services will have financial implications and u/s 49 of the Act, the University has no right to order regularization or appoint any member of the teaching staff or promotion without prior permission of the Government. The relief as sought for as against the University on account of operation of Section 49 of the Act is not maintainable.

It is stated that some of the writ petitions were disposed of on the impression that the said writ petitions are entitled of the benefit of the judgment of the Division Bench in W.A. No. 764 of 1998, as against the said writ petitions, writ appeals have been filed and a Division Bench of this Court has set aside the orders on the ground that there is no such agreement between the parties as in the case of W.A. No. 764 of 1998 and accordingly the said writ petitions are

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listed along with this batch for fresh disposal.

13. On perusal of some the appointment orders of the writ petitioners it is clear that certain part-time teaching arrangements were made for particular academic year alone or until further order whichever is earlier. Certain appointments were made to teach particular number of theory and practical classes and the amount was fixed for each theory and practical class separately. Some of the appointments were made on consolidated pay of Rs. 8, 000/- per month for particular academic year. It is also made clear that the appointment does not confer upon the candidate any right to continue as such or to claim regular appointment in the colleges of Osmania University. The services of the candidates shall be terminated at any time if found unsatisfactory.

14. Learned Counsel for respondents submits that Part-Time Lecturers were either appointed on consolidated pay of Rs. 8, 000/- per month or appointed to teach for a specific number of practical or theory classes, fixing the remuneration for each practical and theory class. None of the petitioners was selected by duly constituted Selection Committee u/s 43 of the Act as none of the petitioners have applied against the notified vacancies, after necessary budget sanctioned. The appointment is purely temporary in nature and as per the covenants of the appointment orders the petitioners are not entitled for any regularization.

15. As per Section 43 of the Act there shall be a constituted Selection Committee in regard to the appointment of Professors, Readers and Lecturers, which shall consist of the Vice-Chancellor, three experts from outside the University, Chairman of the Board of Studies concerned, Head of the Department and the Registrar shall be the Secretary of the Selection Committee and therefore, the appointments were not made by the Selection Committee. Therefore, the petitioners have no right to seek regularization of their services. Section 49 of the Act is mandatory in nature as the University shall not without the prior approval of the Government divert any funds for other purposes or up-grade or revise the scale of pay of its staff or implement any scheme which involves any matching contribution from the Government or create post or posts resulting in a recurring liability on the Government.

16. As per proviso to Section 49 of the Act, the executive council may authorize creation and filling up of posts of teachers for a period not exceeding one year, but any such post shall not continue or create afresh for any period beyond the said period of one year for the existing teaching purposes without the prior approval of the Government.

17. Learned Senior Counsel for Osmania University places reliance on some of the judgments of this Court and the Apex Court in support of his contention that Section 43 of the Act is mandatory and the petitioners are not entitled for regularization as they have not been selected by any duly constituted Selection Committee. It is stated that when the State Government amended Section 43-A of the Act for the purpose of constituting Selection Committee in a deviation of

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Section 43 writ petitions were filed and a Division Bench of this Court in Osmania University Teachers Association (OUTA) and Others Vs. The Union of India (UOI) and Others, , to which I am also a party, delivered by the Honourable Sri Justice B. Sudershan Reddy, held that Section 43-A of the Act enacted by the State of Andhra Pradesh is beyond the Legislative competence of the State. With regard to the selections it is relevant to quote Para 89, which reads as:

"The regulations framed by the U.G.C. having prescribed the qualifications also recommended for the composition of the Selection Committee. The prescription of qualifications for the post of Lecturers, Readers and Professors and the eligibility criteria thereof for the selection and appointment is integrally connected and intertwined with the composition of the Selection Committee. The regulations mandate the universities to ensure that "the process of selection in every case is transparent and credible". The minimum qualifications prescribed and the procedure suggested for the selection and appointment and composition of Selection Committee for selecting the candidates by duly scrutinising each candidate''s selection are various steps in the same process and are integral for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching; examination and research in the Universities."

The Division Bench further held that the Selection Committee constituted by the State Government under the amended Section 43-A of the Act is non est in law and clarified that selections are to be made by duly constituted Selection Committee and following the procedure and norms prescribed under the regulations made by the U.G.C.

18. Insofar as the judgment in W.A. No. 764 of 1998 and batch is concerned on which the petitioners are heavily relying, admittedly, the said matter has gone to the Supreme Court against the judgment in the writ appeals by the Division Bench of this Court and the Supreme Court remanded the matter. No doubt, petitioners therein are also Part-Time Lecturers and they were also similarly situated like the petitioners herein and they have been working for quite a number of years and were qualified and eligible for being appointed as regular Lecturers, but they have been engaged as part-time Lecturers only with payment either on hourly or consolidated basis. In the said batch of cases certain suggestions emerged from the Bench to consider the case of the petitioners by concerned authorities and to make selections on regular basis for the vacant posts, for which the learned Advocate-General appearing on behalf of the State and the Universities agreed for relaxation of age in respect of the petitioners therein to the extent of the services rendered and on the said suggestion the State Government has taken a stand and filed an affidavit and a letter dated 12.9.2002 addressed to the Registrar, Osmania University, Registrar, Kakatiya University and a letter addressed to the Principal Secretary to the Government, Higher Education, which reads as follows:

"It has been decided in principle to permit Osmania and Kakatiya Universities to

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issue a fresh notification inviting the applications from the eligible candidates including the Writ petitioners of the Universities. The cases of the Writ petitioners would be considered for regular appointment in relaxation of the age limit condition. Accordingly you have been requested to furnish the necessary information vide reference for immediate appropriate orders."

19. In view of the letter addressed by the Government and in view of the submissions made by the learned Counsel for the Universities, pursuant to the order issued in the said batch dated 28.12.2001, the respondents have agreed that they would conduct selections and consider the case of the petitioners for regular appointment, after relaxing their age, who have crossed the age limit, seeking appointment as Lecturers. In those circumstances, the Division Bench held that the above arrangement was a fair arrangement and accordingly considered the request of the petitioners. Therefore, while accepting the contentions of the Universities and the State that the petitioners-part-time Lecturers would have to face competition, directed that the process of selection shall be completed within a period of four months from the said date. The candidates who have crossed the age limit shall be granted relaxation for being eligible for selection. During the period of these four months the petitioners shall continue to remain in service on the same terms and conditions which are applicable to them as on that day and shall not be removed from service. If the selection is not completed within four months they shall be entitled to salary in the Grades, which are meant for Lecturers, without further orders from the Court. In those circumstances, directions were issued to the Universities as well as the State Government holding that it is the responsibility of the State Government as well as the Universities to complete the process of selection within four months. It is stated that the aforesaid judgment of the Division Bench in W.A. No. 764 of 1998 is an agreed order and therefore, it has no application to the facts of the case, as in the said case against the judgment of earlier writ appeals, the Apex Court remanded the same and therefore, on the suggestions made by the Division Bench, the State Government and the Universities agreed and the said order was passed.

20. It is stated that all the petitioners are similarly situated as in the case of later judgment of this Court in W.P. No. 6469 of 2001 and batch dated 21.10.2003 disposed of by a Division Bench consisting of the Honourable Sri Justice B. Sudershan Reddy and the Honourable Sri Justice K.C. Bhanu, as in the said batch of writ petitions, all the petitioners herein have been appointed as Lecturers/ Assistant Professors in various departments of Osmania University on contract basis. They have been appointed to various departments commencing from 1985 in one case, 1992 in another case and Ors. were appointed from 1995 onwards. Similar contentions were also raised that they are not being paid the scale of pay attached to the post of Lecturer while extracting more work from them in comparison of those regular Lecturers, by paying a meager amount, and all those contentions have been considered as to whether the petitioners are entitled for regularization of their services or not. While considering the similar

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contentions the Division Bench held:

"In order to appreciate as to whether the petitioners have any right for such regularization as prayed for, we are required to notice the Section 43 of the Andhra Pradesh Universities Act (Act 4 of 1991) mandates that there shall be a constituted Selection Committee in regard to the appointment of Professors, Readers and Lecturers consisting of those whose details are mentioned under the said provision. The direct recruitment for the post of Lecturers/Readers and Professors in the University and Colleges shall be on the basis of the merit through All India advertisement and the selection by the duly constituted Selection Committee in accordance with law. It is unnecessary to refer in details to the qualifications that are prescribed for being selected and appointed as Lecturers/Readers and Professors. Suffice it to notice that one of the essential requirements is that the candidates should have cleared the National Eligibility Test (NET) conducted by the University Grants Commission, Council for Scientific and Industrial Research or similar test accredited by the University Grants Commission. It is also required to notice that in case of direct recruitment for any of those posts, the University is bound to issue necessary public notification inviting applications from all those eligible candidates. Each University is required to maintain roster and scrupulously implement the policy of reservations in favour of the disadvantages sections of the society and Ors. as may be provided for by the University or the Government, as the case may be. The services of the writ petitioners have been engaged under a written agreement on contract for service subject to various terms and conditions to which the writ petitioners have agreed voluntarily. One of the clauses in the agreement, inter alia, states that the petitioners have agreed to perform the teaching work only and they have so agreed after being informed that they are fully aware of the fact that their service is not being taken to fill any existing vacancy or vacancy in future either on temporary or permanent basis whatsoever. The contract is terminable by the University at any time and the petitioners, in such case, are entitled to only pro-rata amount till such time. Suffice it to notice that each of the petitioners have been appointed subject to such terms and conditions incorporated in the agreement. They have undertaken to teach for a particular duration. The contract itself does not create and confer any particular right in any one of them to insist for regularization of their services. The provisions of the Universities Act (Act 4 of 1991) and Statutes, Ordinances and Regulations made by the University do not permit the University to regularize any of the writ petitioners who have been appointed on contract basis. In the circumstances, we are not inclined to issue any direction compelling the University to regularize their services."

The Division Bench further held that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue any writ which may have the effect of amending, varying or modifying the covenants in a contract voluntarily agreed by and between the parties. The origin of the writ petitioners'' appointment as Assistant Professors/Lecturers on contract basis is not traceable to any provision of law or any statutory instrument.

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21. Admittedly, all the petitioners herein were not appointed by any Selection Committee constituted for the purpose and by following any particular procedure as such. Therefore, the University cannot be compelled to continue the writ petitioners as Assistant Professors/Lecturers on contract basis. The University is not under any statutory or legal obligation to do so and in such view of the matter, no such writ of mandamus lies as prayed for by the petitioners.

22. However, the Division Bench held that the relief granted by the earlier Division Bench in W.A. No. 764 of 1998 and Batch, while considering the case of the part-time Lecturers, directed that they shall remain in service on the same terms and conditions as on that day and shall not be removed from service. The Division Bench further directed that the University shall complete the selection process within four months and if at the expiry of four months the selection is not completed they shall be entitled to salary in the Grades, which are meant for regular Lecturers, cannot be made applicable to the petitioners herein as the said direction was an agreed order. However, the Division Bench disposed of the writ petitions with the following directions:

"Having regard to the facts and circumstances of the case, we consider it appropriate to direct the University to permit the writ petitioners to participate in the process of selection and consider their cases for regular appointments; provided they possess the requisite qualification after relaxing the age of those writ petitioners who have crossed the age limit for seeking appointment as Assistant Professors/Lecturers. The University shall take an appropriate decision in the matter and accordingly relax the age limit and shall bear in mind the same while issuing the notification inviting applications from the eligible candidates for selection and appointment as Assistant Professors/Lecturers in various departments. We make it clear that the writ petitioners will have to face the competition and shall have to compete with others for their selection and appointment as Assistant Professors/Lecturers. The University while issuing the notification shall take all the relevant factors into consideration including the roster points."

23. With regard to regularization of temporary services the learned Counsel appearing for the University placed reliance on the following judgments:

In Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and Ors. 1994 (3) SCC 380, with regard to regularization of services of temporary employees the Apex Court held as under:

"Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have regularized as she had been working without break for nine years."

In case of State of Orissa and Another Vs. Dr. Pyari Mohan Misra, , with regard to

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regularization of ad hoc posts the Apex Court held that mere prolonged and continuous ad hoc service does not ripen into a regular service to claim permanent or substantive status. In case of Ashwani Kumar and Others Vs. State of Bihar and Others, with regard to recruitment made contrary to the rules and without sanctioned posts backed by financial budget support the Supreme Court held as:

"Question of regularization in any service including any Government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employed them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the concerned employees can give their best by being assured security of tenure. But, this would require one pre- condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against a suitable vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed the procedure for such recruitment."

In case of Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, , the Apex Court with regard to continuation of unsuccessful candidates, who are not selected, till they are selected by the Selection Committee held that regularization excludes a large number of very competent persons who if given opportunity available would have applied. There cannot be sympathy in rank, principles of equity, justice and fair play to regularize ad hocism, justifying merely on eligibility criteria. Selection of teacher has not to be on minimum eligibility but best available from a larger sphere. Not from the limited sphere of ad hoc or stopgap appointees. This affects teaching standard of Universities and output of students at large. There is distinction between regularization and promotion. Regularization means, one which is already working, doing or has done something which law did not permit but the same is being regularized, treated to be done in accordance with law, treat one as such. Hence in such cases regularization cannot be said to be a promotion. In the instant case there cannot be any regularization of the writ petitioners whose appointments are ad hoc or temporary as per the agreement for a specific academic year and such functioning of the petitioners is not in conformity with Section 43 of the Act. The University by itself without following any procedure cannot regularize the case of the petitioners as desired by them. The Apex Court further held that it is relevant to quote:

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"University imparts education which lays foundation of wisdom. Future hopes and aspirations of the country depends on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning, deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such institutions produce good citizens? It is the educational institutions, which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed. If the institutions perform dedicated and sincere service with the highest morality it would not only uplift many but bring back even a limping society to its normalcy. As we have already recorded above from the stand of the University itself that this was done as a special stipulation circumstance not in accordance with the normal mode of appointment, we deprecate this and record that in future such situation should not be brought in for taking such decisions at the cost of recognised regular selection of teachers."

In case of State of U.P. and Others Vs. Raj Karan Singh, , the Supreme Court held that merely because a person continues under an interim order of the Court, such continuance on the post cannot confer on such person any right for continuance and also not entitled for regularization. Any interim order is only an arrangement pending decision of the Court and cannot disturb the position of law or equities as on the date of the disposal of the writ petition. The Apex Court in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , held that once the statutory rules have been made the appointment shall be only in accordance with the rules. The executive power is co-extensive with legislative power of the State and it could be exercised only to fill in the gaps but the executive cannot supplant the law, but only supplement the law. In the instant case, the appointment given is not traceable to any provision of law. Learned Counsel for the petitioners could not lay any foundation under what law the petitioners are entitled for regularization. For the aforesaid reasons, I am of the opinion that the petitioners are entitled to the similar relief as was ordered by the Division Bench of this Court in W.P. No. 6469 of 2001 and batch dated 21.10.2003. Sri S. Ramachandra Rao, learned senior Counsel appearing for petitioners submits that the University has been making attempts to displace the writ petitioners who are already working as contract Assistant Professors/ Lecturers in order to appoint others in their place on the very same basis which cannot be countenance by this Court. I hope and trust that the University shall not resort to any practice of displacing one contract Assistant Professor/Lecturer and appoint another in his place. Any such action may be arbitrary. Learned Government Pleader appearing for the State and the University submitted that there has been no such attempt on the part of the University 2004(6) FR-F-9 to displace one contract Assistant Professor/ Lecturer and to appoint another in place of such displaced contract Assistant Professor/ Lecturer. It shall always be open to any of those writ petitioners to approach this Court in case any such

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attempts is made by the University. However is shall always be open to the University to terminate the contract of any such Assistant Professor etc., by invoking covenants in the contract but not for the purposes of appointing somebody else on the contract basis unless person to be appointed is better qualified and more suitable for entrusting with teaching assignment. As it is not desirable to replace the temporary services of the petitioners, making similar arrangements, with some others, the respondents shall take steps to identify regular vacancies that are to be filled on permanent basis. Accordingly, the respondents are directed to issue notification and fill up the regular vacancies before the end of the academic year and complete the process of selection on or before 31.3.2005.

26. Following the aforesaid judgment of the Division Bench in W.P. No. 6469 of 2001, I dispose of the writ petitions. Having regard to the facts and circumstances of the case, I consider it appropriate to direct the University to permit the writ petitioners to participate in the process of selection and consider their cases for regular appointments; provided they possess the requisite qualification after relaxing the age of those writ petitioners who have crossed the age limit for seeking appointment as Assistant Professors/Lecturers. The University shall take an appropriate decision in the matter and accordingly relax the age limit and shall bear in mind the same while issuing the notification inviting applications from the eligible candidates for selection and appointment as Assistant Professors/Lecturers in various departments. I make it clear that the writ petitioners will have to face the competition and shall have to compete with others for their selection and appointment as Assistant Professors/Lecturers. The University while issuing the notification shall take all the relevant factors into consideration including the roster points. No further direction as such shall be issued in the matter. The writ petitions are accordingly disposed of. There shall be no order as to costs. Consequently, the interim order earlier granted by this Court shall stand vacated.

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