
(2008) 02 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (C) No. 2462 of 1993

Smt. Veena Gupta

APPELLANT

Vs

Director of Education, Lt. Governor

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Citation : (2008) 147 DLT 626 : (2008) 101 DRJ 666

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Milanka Chaudhary, for the Appellant; Avnish Ahlawat, for Respondent Nos. 1 and 2 and Nandini Sen, for the Respondent

Judgement

Kailash Gambhir, J.—The petitioner prior to seeking amendment in the writ petition, had approached this Court in the year 1993 invoking the jurisdiction of this Court under Article 226 of the Constitution of India seeking regularization on the post of Trained Graduate Teacher (TGT) w.e.f. 12.1.1977 with all consequential benefits including seniority, provident fund, arrears of salary, gratuity, pension and DA etc. The petitioner has also sought quashing of letter dated 26.3.1993 whereby respondent No. 1 i.e. Office of the Directorate of Education had declined to entertain the proposal for regularizing the services of the petitioner on the ground that the candidature of the petitioner along with other such candidates would be considered only when vacancies arise in the school and for which normal procedure for notification of vacancies as per 40 point roster shall be adopted. The petitioner has also sought declaration of Rule 151 of the Delhi School Education Rules as ultra virus being in violation of Articles 14, 16, 21 and 39D of the Constitution of India. Before dealing with the rival contentions of the parties, it would be appropriate to give brief description of facts. The petitioner claims that she was initially appointed as Post Graduate Teacher (PGT) with Lady Irwin Senior Secondary School, which is an aided school established much prior to coming into force of The Delhi School Education Act, 1973. The petitioner was appointed on the post of Post Graduate Teacher (PGT)

vide orders dated 25.9.1972 on the consolidated salary of Rs. 550/- per month and while she was working on the said post vide memorandum dated 12th January, 1977 the respondent No. 3 School informed her that the post of PGT (Economics) will continue up to 31st January, 1977 (AM) and in its place she was offered the post of TGT (Economics) w.e.f. 1st February, 1977. The petitioner was required to give her acceptance to the said offer for appointment on the post of TGT w.e.f. 1st February, 1977 in the scale of Rs. 440-750. The petitioner reluctantly gave her consent on the specific assurance of respondent No. 3 that her service on the post of TGT shall be regularized with the necessary approval of respondent No. 1. The petitioner kept on making the request for regularization of her service orally as well as personally, but a written representation in this regard was made by the petitioner after a long gap of about more than 9 years. The representation dated 7th August, 1986 has been placed on record by the petitioner to that effect. Thereafter, various representations were made by the petitioner as well as letters were sent by the school to respondent No. 1 requesting for her regularization on the said post with all admissible benefits. It is only when respondent No. 1 wrote letter dated 26th March, 1993 informing the school that the candidature of the petitioner and other such candidates could only be considered after availability of the vacancies, the petitioner got activated to assail the same by filing the present petition. The petitioner amended the said writ petition by moving an amendment application in the year 2003 and in the amended writ petition the petitioner added another prayer so as to seek regularization of her services on the post of PGT w.e.f. 27.9.1972 with all consequential benefits. The petitioner sought amendment in the writ petition on the ground that the Directorate of Education vide their letter dtd. 24th November, 1972 had duly accorded approval to the appointment of the petitioner on the post of PGT (Economics) with effect from the date of her appointment with the said school. The petitioner also placed on record photocopy of the minutes of the Selection Committee dated 23.9.1972, photocopy of the letter dated 25th September, 1972 issued by the school informing the petitioner about her appointment, photocopy of the letter dated 19.10.1972 from the Education Officer seeking clarification from the school about the due sponsorship of these candidates by the employment exchange, photocopy of the letter dated 4th November, 1972 whereby a reminder was sent by the school to the Education Department regarding the grant of approval of the said appointments, a copy of the proforma for seeking approval of appointments and a copy of the letter dated 24th November, 1972 from the Education Officer, Directorate of Education to the school whereby the necessary approval was granted on the appointment of the petitioner along with two candidates. On the strength of these documents the petitioner added the said relief of claiming regular appointment on the post of PGT (Economics) with all consequential benefits. No counter affidavit was filed by respondent No. 3 school to the amended writ petition. However, in the counter affidavit filed by the school to the initial writ petition, the stand taken is more or less, in support of the petitioner. Respondent No. 3 stated that the appointment of the petitioner was made on ad hoc basis on the post of PGT (Economics) on a

consolidated salary of Rs. 550/- per month, which was to be paid by the school from the development fee fund as maintained by the school. Even on the post of TGT the consolidated salary was being paid by the school from the development fee fund. Respondent No. 3 also stated that the petitioner was given an opportunity to become a regular teacher on the post of assistant teacher when the vacancies arose on the said post in the year 1987-88, but the said offer was ignored by the petitioner due to risk of incurring heavy financial losses on such acceptance. Respondent No. 3 school further submitted that the school had taken up the matter with the Directorate of Education for absorption of the petitioner on the regular post of TGT (Economics) but despite many letters written by the school, the Directorate of Education did not agree to accord permission for regularization of the petitioner on the said post of TGT (Economics).

2. Respondents No. 1 and 2, mainly contested the claim of the petitioner. The stand of respondents No. 1 and 2 as stated in their counter affidavit, inter-alia are that appointment of the petitioner is not in accordance with the provisions of Delhi School Education Act and the rules framed there under and the arrangement between the petitioner and respondent No. 3 school is a kind of private arrangement for which no consent was ever given by respondents No. 1 and 2. Respondents No. 1 and 2 have also stated that no regular Departmental Promotion Committee was ever held for selection of the petitioner on the said post and no approval was ever granted by the Director of Education to the said post of the petitioner. Respondents No. 1 and 2 also stated that the petition filed by the petitioner is hopelessly barred by time. The respondents No. 2 and 3 have also stated that the petitioner was appointed on a consolidated salary by the management of the school without following proper procedure of selection. It has been stated that the petitioner was never appointed on the said post of TGT (Economics) in the grant-in-aid category, but was appointed in the development fee category. These respondents also contended that the Directorate of Education, who gives 95% grant-in-aid to the aided schools had never released the petitioner's salary as the name of the petitioner never existed in the grant-in-aid list. The authenticity of the letter dated 6th November, 1987 was disputed by the respondents No. 1 and 2 on the ground that the same does not appear to be genuine. The respondent also contended that in the year 2001, in the category of TGT, 12 vacancies were available with the school but they still did not select the petitioner and, Therefore, once no proper selection was made by the school as per the mandate of the Delhi School Education Act and the rules framed there under, neither the status of the regular post could be conferred on the petitioner nor any benefits could be given to her. It is also stated that Rule 151 of the Delhi School Education Act is not arbitrary or illegal. It has also been stated that the grant-in-aid is provided to the school on the sanctioned strength of the school and in case of school engaging the service of any individual, privately, without proper sanction of the Directorate of Education, then the Directorate cannot be held liable for such appointments and payments of such teachers have to be made by the school out of the Development Fee Fund. Even for ad hoc

appointment a Departmental Promotion Committee has to be constituted and, Therefore, under no circumstances the appointment of the petitioner can be held to be properly made through the process of her undergoing selection by the Departmental Promotion Committee, Therefore, it was a pure and simple private arrangement between the petitioner and the school. I have heard learned Counsel for the parties at considerable length. The main thrust of counsel for the petitioner has been on the argument that the petitioner, who has put in more than 30 years of service, has been arbitrarily and discriminately denied regularisation firstly on the post of Post Graduate Teacher (Economics) against which the petitioner was duly selected by the Selection Committee and then on the post of Trained Graduate Teacher (TGT) w.e.f. 12.01.1977, which post the petitioner was asked to accept after abolition of the post of Post Graduate Teacher (Economics). The petitioner has placed reliance on the proceedings of the Selection Committee dated 23.09.1972 in which, name of the petitioner appeared in the selected category at Serial No. 6. The counsel for the petitioner contended that the Selection Committee was duly constituted in accordance with the criteria laid down under the Delhi Education Code, 1965 and the same also comprised of a nominee of the Education Department. The counsel also contended that the name of the petitioner was duly sponsored by the Employment Exchange and vide letter dated 24.11.1972, Directorate of Education Delhi, Zone VIII (Girls), defense Colony, New Delhi had duly accorded approval to the appointment of the petitioner against the said post of PGT (Economics). The counsel also, placed reliance on the proceeding sheets of the respondent school dated 26.09.1975, which shows that one Miss Sunita Bhattacharya was selected against the leave vacancy of the petitioner which fact shows that the appointment of the petitioner on the said post of PGT (Economics) was on regular basis.

3. For claiming regularisation and absorption on the post of TGT (Economics) the counsel for the petitioner vehemently contended that the school wrote several letters to the Education Department of Delhi Government requesting them to absorb the petitioner on the said post of TGT in grant-in-aid category against vacancies already existing in the school but the Education Department, i.e., respondent No. 1 did not pay attention to such requests being made by the petitioner as well as the school. Counsel for the petitioner also contended that the case of the petitioner was of a deemed approval, as the Directorate of Education never rejected or declined the request of the respondent school made vide letter dated 16.1.1993, under Rule 98(4) of Delhi School Education Rules, 1973 to the said appointment of the petitioner on the post of TGT (Economics). Earlier, the petitioner prayed for regularization of her services as TGT (Economics) w.e.f. 1.2.77 with all consequential benefits but later, by amending the writ petition the petitioner has sought for regularization on the post of PGT (Economics) w.e.f. 27.9.72. In view of the said claim of the petitioner in respect of the said two reliefs the position which is required to be examined by this Court is as to whether the petitioner is eligible for appointment on the post of PGT

(Economics) w.e.f. 27.9.72 in accordance with law as laid down by Delhi School Education Code, 1965 as it was then in force. If the petitioner is considered to have been legally appointed on the said post of PGT (Economics), then, no question would arise to grant the petitioner the relief of regularization of her services on the post of TGT (Economics) w.e.f. 1.2.77 as the post of TGT is lower in rank to the post of PGT. In the event of this Court not finding appointment of the petitioner legal on the post of PGT (Economics) then the other question to be considered would be as to whether the petitioner was legally and validly appointed on the post of TGT (Economics) w.e.f. 1.2.77 or not. Let me first examine as to whether the petitioner was legally and validly appointed on the post of PGT on 27.7.72 against a regular post in accordance with the mandate of Delhi School Education Code and as to whether the petitioner can be given any relief being sought by her after a lapse of about more than 30 years. The documents which have been placed on record by the petitioner in support of her claim for regularization of her services on the post of PGT (Economics) w.e.f. 27.7.72 are as follows:

1. Copy of the letter dated 22.9.72 from Delhi Administration, thereby requesting the petitioner to report to the Principal of the said school for consideration against vacancy of economic's teacher with all certificates, degrees etc. in original.
2. Copy of the letter dated 19.10.72 addressed by the Education Officer, Directorate of Education to the School to obtain the information as to whether the candidate being called for interview was duly sponsored by the Employment Exchange or not.
3. Copy of the letter dated 23.10.72 addressed by the School to the Education Officer seeking approval of the appointment of the petitioner on the post of PGT (Economics) on a consolidated salary of Rs.550/- per month out of the Development Fee Fund.
4. Photocopy of letter dated 4.11.72 from the School to the Education Officer thereby reminding the Education Officer for granting approval of the three cases of the teachers pending for approval.
5. Copy of letter dated 24.11.72 from the Education Officer to the School intimating the grant of approval of the appointment of the petitioner and two other candidates.
6. Photocopy of the selection list dated 23.9.72 showing selection of the petitioner on the post of PGT (Economics).
7. Photocopy of the letter dated 22.10.72 from the school to the petitioner intimating her appointment on the said post of PGT (Economics).
8. Copy of proforma for seeking approval of appointment made by the management of the school.

9. Photocopy of the chart, showing Ms. Sunita Bhattacharya as selected candidate of the year 1975 against leave vacancy of the petitioner.

10. Copy of the list showing the names of the teachers working with the school in the Development Fee cadre.

4. Perusal of all these documents clearly show that the petitioner was appointed on the post of PGT (Economics) on a consolidated salary of Rs. 550/- per month in the Development Fee category. The said documents further show that the petitioner was appointed due to the vacancy caused after resignation of one Mr. P.P. Garg. However, the column of sanctioned post was left blank in the proforma for seeking approval of appointments by the Managing Committee. All these documents clearly show that appointment of the petitioner on the said post of PGT (Economics) was neither against a regular vacancy nor the same was against any sanctioned post. The said post was not in the category of grant-in-aid but the same was in the category of Development Fee. As per the provisions of Delhi School Education Code the person who was appointed on the regular post against the sanctioned post was entitled to draw the regular pay scale of that post and such a person had to undergo probation for a period of one year which could be extended up to two years with prior approval of the Department and it was only on completing the probation period that the person could be regularised on the said post. Admittedly, the petitioner was appointed on a consolidated salary of Rs. 550/- per month and was drawing salary from the Development Fee Category and, Therefore, the petitioner was never appointed in accordance with the provisions of Delhi School Education Code in the regular pay scale from the Grant-in-Aid category. The petitioner, thus, cannot claim any right on the said post on the basis of selection made in the Development Fee Category. Moreover, the petitioner cannot be allowed to enforce her alleged claim for regularization on the said post of PGT (Economics) after a lapse of more than 30 years that too when the petitioner had willingly accepted the post of TGT (Economics) in the year 1977. The claim of the petitioner with regard to regularization on the post of PGT (Economics) is, Therefore, patently bad and untenable in law due to inordinate and unexplained delay and laches on the part of the petitioner. With regard to appointment of the petitioner on the post of TGT (Economics) w.e.f 1.2.77, the case of the petitioner is that the petitioner had been regularly working on the post of TGT (Economics) in the scale of Rs. 440-750 on the continuous assurance given by the respondent school for regularizing the services of the petitioner after seeking approval from respondent No. 1, i.e., Director of Education. It is also the case of the petitioner that she had been orally requesting the respondent school for her regularization on the said post but for the first time vide letter dated 7.8.86, representation in writing was made by her to the School, thereby, making a request for her absorption as a regular employee on the said post. Acting on the said request of the petitioner, the school also wrote number of letters to the Directorate of Education and similarly, the petitioner also through her various letters dated 19.12.89 17.4.91, 25.4.91 and 15.7.91 reiterated her request for regularization of her services on

the said post with retrospective effect with all consequential benefits. Similarly, letters dated 22.10.91 and 16.1.93 were sent by the Managing Committee to the respondent No. 1, but disagreeing with the request of the petitioner as well as of the school, the respondent No. 1 vide letter dated 26.3.93 rejected their request on the ground that the petitioner could appear for selection, only through employment exchange, against the notified vacancy. It is not denied that the post of PGT (Economics) was abolished in the year 1977 and thereafter the petitioner had accepted the post of TGT (Economics) and it is an admitted case that the appointment of the petitioner on the post of TGT (Economics) was not in accordance with Rule 96 of the Delhi School Education Rules. Once the petitioner was not appointed on the post of TGT (Economics) as per the mandate of law as envisaged in the Rules framed under The Delhi School Education Act, evidently, the petitioner cannot claim any legal and vested right for appointment on the regular post of TGT (Economics) w.e.f. 1.2.77. It is also an admitted case of the parties that the appointment of the petitioner whether on the post of PGT (Economics) in the year 1972 or on the post of TGT (Economics) in the year 1977 was not in the category of Grant- in-Aid but in the Development Fee category. The admitted legal position is that as far as any recognised school is concerned, appointments against the regular posts are to be made as per the post sanctioned in a particular school and not otherwise. These posts are sanctioned by the Directorate of Education keeping in view the strength of the students. The Directorate of Education grants 95% aid and 5% share is met by the management, Therefore, for any salary payable to a teacher, 95% contribution is by the State Government and 5% is by the management. Now the question arises that once the appointment of the petitioner was not made on the said post of TGT (Economics) against any sanctioned post and she has not undergone the requisite process of selection by the duly constituted committee, then on what basis the petitioner can be given the status of a regular teacher on the post of TGT (Economics). This Court can give directions to the State Government only when the petitioner and the School have duly followed the relevant provisions of Delhi School Education Act and the Rules framed there under and not otherwise. It cannot be believed that the petitioner was not aware of her status as that of an ad hoc employee. Although the petitioner kept on taking the matter through various representations but representations in itself cannot come to the rescue of the petitioner, so as to secure her the grant of regular status. No material has been placed on record by the petitioner or the school to show that regular post of TGT (Economics) ever existed in the school or against such a vacancy candidature of the petitioner was considered. The documents placed on record, however, certainly, show that 12 TGT vacancies had arisen but none of the said vacancies were in the category of TGT (Economics) as out of 12 vacancies 6 were in English, 1 in Maths, 4 in Social Science and 1 in Sanskrit. Against the said 12 vacancies, Assistant Teachers were promoted and, Therefore, as per the vacancy position, no post of TGT (Economics) had ever arisen so as to afford any chance to the petitioner either for her absorption on the said post or for her regular appointment on the post of TGT (Economics). Although, respondent School has

been making representations to Directorate of Education i.e., respondent No. 1 for her absorption but the appointment of the petitioner on the said post could have been only considered after creation of such a vacancy in the school. Respondent No. 1 could not have agreed for absorption of the petitioner against the said post without there being any post itself. The demand of regularization of the petitioner on the said post of TGT (Economics) as made by the petitioner as well as by the school has no basis. It is no doubt unfortunate that for the last 30 years the fate of the petitioner has been hanging in air for appointment on the said regular post of TGT (Economics) but, for the same, to a great extent the petitioner herself has to share the blame.

5. Mr.Kailash Vasdev, Senior Advocate for the petitioner placed reliance on judgments of the Apex Court reported in Rattan Lal and Others Vs. State of Haryana and Others, and Sri Rabinarayan Mohapartra Vs. State of Orissa and others, in support of his argument that policy of adhocism followed by the State Government for a long period results in breach of Articles 14 and 16 of the Constitution of India. In the case of Rabinarayan Mohapatra (supra), the Hon''ble Supreme Court gave directions for regularization of ad hoc service of the teacher with effect from the date of initial appointment after it was found that the said teacher was being appointed for short spell of 89 days but continued on the post of Teacher with approval of authorities for a continuous period of 4 years by giving one day break in between the spells of 89 days. In the case of Rabinarayan Mohapatra (supra) the Supreme Court deprecated the practice of the State Government to appoint ad hoc teachers at the commencement of the academic year and to terminate them before the next summer vacation or earlier and then to re-appoint such teachers at the commencement of the next academic session. In the backdrop of facts of that case, the Supreme Court gave directions to the State Government to take immediate steps to fill up the vacancies in accordance with the relevant rules and till the regular vacancies are duly filled up, to allow all these teachers working on ad hoc basis to remain on the posts. The Supreme Court also gave directions to consider the cases of the ad hoc teachers against regular vacancies in case they fulfilled the prescribed qualification.

6. Both the above judgments cited by the learned Counsel for the petitioner may not be of much help to the petitioner, in view of the recent decision of the Constitution Bench of the Supreme Court reported in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Moreover, in Rabinarayan Mohapatra's case, the Supreme Court has taken into consideration the provisions of The Validation Act which were in force in the State of Orissa and after taking into consideration the provisions of the Validation Act especially Section 3 of the same, directions were given for regularizing the ad hoc services of the teachers appointed for short spells with artificial breaks in service.

7. Reference is invited to the observation of the Supreme Court in Paras 6 and 8 of the said judgment as under:

6. The Validation Act has been enacted by the Orissa legislature with the obvious object of granting relief to those members of teaching community who are being exploited for years together by keeping them in short spell appointments like 89 day-appointments as here with one day break and in the process denying them their rightful dues and other service benefits. In spite of repeated deprecations by this Court the practice continues to be followed by various State Governments in the country. Under the Constitution the State is committed to secure right to education for all citizens. Bulk of our population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set up effective and efficient it is necessary to do away with ad hocism in teaching appointments. An appointment on 89 day basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits, is wholly arbitrary and suffers from the vice of discrimination. The Validation Act covers the field up to December 31, 1984. The State of Orissa will do well to consider the cases of all those who have completed one year or more as ad hoc teachers after December 31, 1984 and come out with a scheme or any other appropriate measure to regularise their services.

8. The appellant was appointed on July 12, 1982 and has been working with the approval of the authorities for almost 4 years with short breaks. The managing committee is still utilising his services though there is no approval by the educational authorities for the period subsequent to 1986. It is nobody's case that his services were ever terminated on grounds of inefficiency or misconduct. The case of the appellant is, thus, fully covered by Section 3 of the Validation Act. We are of the view that the High Court erred in denying the benefit of the Validation Act to the appellant on the ground that his initial appointment for 89 days was conditioned by the stipulation that he would continue until replaced by a candidate from the select list. The High Court read into the Act what was not there. In response to the notice issued in the SLP the managing committee through its Secretary-cum-Head Master has stated that the appellant is still continuing to serve as Hindi Teacher in the school under the orders of the managing committee.

8. Counsel for the respondent on the other hand, placed reliance on the following judgments:

1. E. Ramakrishnan and Others Vs. State of Kerala and Others, .
2. Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, .
3. Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.,

4. Guru Tegh Bahadur Hospital v. Kamlesh and Anr. LPA No. 734/2002
5. Shri Rakesh Kumar and Ors. v. MCD and Anr. LPA No. 1106/2004
6. NCT of Delhi v. Champa Devi LPA No. 716/2004
7. 1996 VIII AD 680 (SC)
8. State of Haryana Vs. Jasmer Singh and others,
9. Secretary, State of Karnataka and Others Vs. Umadevi and Others,
10. Dr. (Mrs.) Chanchal Goyal Vs. State of Rajasthan,

9. It is no more rest integra that regularization is not a mode of recruitment. The process of regularization involves regular appointment against a sanctioned post in accordance with the recruitment rules and, Therefore, unless the appointment of an incumbent is made in accordance with the prescribed procedure as per the recruitment rules and by duly constituted Selection Committee, the Court cannot direct regularization of a person appointed on ad hoc basis or temporary basis against the regular post. Reference is made to the following observations of the Supreme Court in the case of Hindustan Shipyard Ltd. and Others Vs. Dr. P. Sambasiva Rao and Dr. S. Prasada Rao, .

10. We are unable to endorse the direction given by the High Court regarding regularisation of the respondents-medical officers with effect from 1-4-1986. The process of regularisation involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which have been made by the appellant-Corporation, regular appointment on the post of medical officer can only be made after the duly constituted Selection Committee has found the person suitable for such appointment. Dr P. Sambasiva Rao, though he had been working since 1976, was considered by the Selection Committee for regular appointment in the year 1981 and was not found suitable for such regular appointment. Dr J. Sanjeeva Kumar and Dr S. Prasada Rao were never considered by the Selection Committee for regular appointment. The fact that no regular selection has been made after their appointment on ad hoc basis does not mean that they are entitled to be regularised with effect from 1-4-1986. In view of the Rules prescribed by the appellant-Corporation, regularisation of the respondent medical officers on the post of medical officer can be made only after they are considered and found suitable for such appointment by a duly constituted Selection Committee. As a result of the direction for regularisation given by the High Court, the requirement in the Rules regarding selection by a Selection Committee for the purpose of regular appointment on the post of medical officer has been dispensed with. This, in our opinion, was impermissible.

10. In the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., , the Supreme Court has held that the Courts cannot create a post where none exists and cannot issue directions to absorb/regularize temporary employees, nor can continue such employees in service nor

pay them salaries of regular employees as these are purely executive or legislative functions. The Apex Court further held that judicial activism in this connection is deprecated. The Apex Court even went to the extent of holding that such questions of granting regularization by the Courts must be decided on legal principles and not on the basis of emotions and sympathies. Reference is invited to the following observations of the Supreme Court:

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in Court have to be decided on legal principles and not on the basis of emotions and sympathies.

38. The respondents have not been able to point out any statutory rule on the basis of which their claim of continuation in service or payment of regular salary can be granted. It is well settled that unless there exists some rule no direction can be issued by the court for continuation in service or payment of regular salary to a casual, ad hoc, or daily-rated employee. Such directions are executive functions, and it is not appropriate for the court to encroach into the functions of another organ of the State. The courts must exercise judicial restraint in this connection. The tendency in some courts/tribunals to legislate or perform executive functions cannot be appreciated. Judicial activism in some extreme and exceptional situations can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.

40. The courts must, Therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam v. Dy. Supdt. of Police* and we fully agree with the views expressed therein.

11. Law with regard to the rights of daily wagers, casual employees, ad hoc employees, temporary employees and of such similar other appointments in public employment has now been authoritatively settled by the Constitution Bench of Hon'ble Supreme Court of India in *Umadevi's case* (supra), after the Hon'ble Court found conflict of decisions between the three Judge Bench and two Judge Bench of the Apex Court. The following observations of the Supreme Court in the said judgment would be relevant for deciding the present case.

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down

the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arm's length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not

permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

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

12. In Para 53 of the said judgment, the Hon''ble Supreme Court has come to the rescue of all those irregularly appointed persons who have worked for 10 years or more for granting them regularization as a one-time measure provided they worked for the said period against duly sanctioned post and not under the cover of the orders of the Courts or of Tribunals. In the present case, it is not the case of the petitioner that she was appointed on a post of TGT against a sanctioned

post. The petitioner was admittedly appointed on the post of TGT (Economics) in the category of development fee and her such ad hoc appointment was extended by the school from time to time. The petitioner as well as the school made various representations to the Director of Education but with a request to grant absorption to the petitioner, straightway, on the post of TGT (Economics) and it is not the case of either of the parties that the regular post for TGT (Economics) was ever created in the school and candidature of the petitioner was ever considered against such sanctioned post. Although, it is beyond one's comprehension as to why for such a long period the school employed the petitioner on ad hoc basis without there being any regular vacancy for the said post. Rule 151 of The Delhi School Education Rules, 1973 clearly lays down that the teachers appointed on ad hoc basis in the category of development fee shall have no claim, whatsoever, for seeking regular appointment, seniority or even any benefit of provident fund, pension, gratuity etc. as are admissible to the regular teachers of the school. However, the said rule further states that such teachers working on ad hoc basis may apply for regular appointment as and when a regular vacancy arises in the school and once selected for the regular appointment, the appointment of such teachers shall not relate back to the date of his/her appointment on ad hoc basis in development fee category but to the date of the regular appointment alone. Rule 151 of The Delhi School Education Rules, 1973 is reproduced as under:

151. Development Fees (1) The managing committee of an aided school may charge, with the previous approval of the Director, a development fee from the students in order to cover expenses incurred by it in effecting special improvements on which no aid is admissible under these rules.

(2) Development fee may be charged at such flat rate as may be specified by the Director and shall be utilised for one or more of the following purposes, namely:

(a) appointment of additional or more qualified teachers in excess of the number admissible under the rules relating to post-fixation or aid;

(b) provision for teaching of special subjects approved by the Director for which no aid is admissible under these rules;

(c) purchases of any special teaching or audio visual aids and other equipments which are not possessed by the school;

(d) provision of special amenities to students, such as, additional fans, supply of cool drinking water, provision of materials for hobbies, craft and medical aid.

(3) Where any development fee is levied to meet the pay and allowances of additional or more qualified teachers, such teachers shall be appointed on ad hoc basis and shall have no claim whatsoever for regular appointment, seniority or benefits of provident fund, pension gratuity or any other benefit admissible to the regular teachers of the school:

Provided that such teachers may apply for regular appointment as and when a

regular vacancy arises in the school.

(4) Where any such teacher is selected for regular appointment, such appointment shall have effect from the date of the regular appointment and not from the date from which such teacher is working in the school as a teacher paid from the development fee.

(5) Appointment of teachers who are paid from the development fee shall be subject to these rules so far as they relate to the appointment of regular teachers in the school.

13. Although in the petition, the challenge has been made by the petitioner to the virus of the said rule, but the counsel for the petitioner has not advanced any arguments on the said aspect and, Therefore, the prayer made in the petition in this regard is treated as not pressed. After perusing Rule 151 of The Delhi School Education Rules, 1973, it is apparent that the petitioner cannot claim a right of regular appointment on the ground of being appointed on ad hoc basis in the development fee category. The petitioner was also never appointed on the regular post of TGT (Economics) against a sanctioned post and she was never selected by the Selection Committee on the post of TGT (Economics) as envisaged under Rule 96 of The Delhi School Education Rules. The petitioner also cannot claim her appointment on the said post of TGT (Economics) to be that of a deemed approval, simply, on the basis of the letter dated 16.1.1993 sent by the School to the Director of Education as the said letter does not show that the petitioner was duly selected on the said post by the Selection Committee against a sanctioned post. The letter dated 16.1.1993 is a request from the School to the Directorate of Education to consider the absorption of the present petitioner and other two teachers against the vacancies of reserved quota and such a request made by the school cannot have the effect of a decision as envisaged under Rule 96 of the Delhi School Education Rules.

14. In the light of the aforesaid discussion, the petitioner is not found entitled to claim any right either on the post of PGT or on the post of TGT and Therefore, regularization on these posts as claimed in the petition cannot be granted. In any event of the matter, one can not be oblivious of the fact that the school respondent No. 3 has fully utilised the services of the petitioner initially on the post of PGT and then on the post of TGT without there being any complaint but still the petitioner stands deprived of not only claiming salary at par with the other teachers who were on equivalent post but will be further deprived from retiral benefits. The respondent No. 3, thus cannot escape its liability as it has totally abdicated its responsibility to create a post against which services of the petitioner were continuously being availed of. No serious efforts were put by the respondent No. 3 to create a regular post for the petitioner and she continued under the Development Fee Category. Keeping in view the long ordeal and hardship suffered by the petitioner and in the peculiarity of facts of the present case, the respondent No. 3 is directed to at least pay half of the salary as was being paid to the regular teacher on the post of the TGT (Economics) w.e.f.

12.01.1977. Since, to a large extent the petitioner herself was responsible for not taking timely steps to claim regular appointment on the above post, Therefore, interest of justice would be best served if half of the salary of the past period w.e.f. 12.1.1977 till retirement is paid to the petitioner. The respondent No. 3 shall pay the entire arrears towards the half salary after adjusting the amount already paid to the petitioner within three months from the date of this order. In case the petitioner is still in service, then for the further period the respondent No. 3 shall pay the full salary as payable on the equivalent post. With these directions, the writ petition stands disposed of.