
(2014) 08 BOM CK 0027
In the Bombay High Court
Case No : Writ Petition No. 646 of 2013

Solapur University

APPELLANT

Vs

Radhika Nadhukar Yele

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Maharashtra Universities Act, 1994 — Section 5, 59, 8

Citation : (2014) 5 ABR 747 : (2015) 2 ALLMR 686 : (2015) 3 MhLj 906

Hon'ble Judges : G.S. Kulkarni, J

Bench : Single Bench

Advocate : P.N. Joshi and I.M. Khairdi, Advocate for the Appellant; N.V. Bandiwadekar and A.D. Kango, A.G.P, Advocate for the Respondent

Judgement

G.S. Kulkarni, J.—These batch of Writ Petitions arise out of a common order dated 10.1.2012 passed by the Learned Presiding Officer, College Tribunal Mumbai. The learned counsel for the parties agree that common questions of fact and law arise in all these Petitions and that the petitions can be disposed of by this common Judgment. Rule returnable forthwith. By consent of the learned counsel for the parties and at their request taken up for final hearing.

2. By these Petitions filed under Article 226 and 227 of the Constitution of India the Petitioner-Solapur University challenges the common Judgment and Order dated 1st November, 2012 passed by the Learned Presiding Officer, University and College Tribunal Solapur University (for short "the Tribunal"). By the impugned orders the Tribunal has allowed the appeals preferred by the Respondent No. 1 in each of these Petitions. (for short "the Respondents"). The Tribunal has quashed and set aside the order dated 10th January, 2012 issued by the Petitioner and has directed reinstatement in service of the concerned Respondents.

3. In short the facts are:--

In the year 2004, the Petitioner-University was constituted by the Government of Maharashtra under the Maharashtra Universities Act, 1994. The State Government issued a Government Resolution dated 11th of May, 2007, whereby for the Petitioner-University 150 non-teaching posts were created. Out of these 150 posts 30 posts were to be filled up on contract basis. The finance in regard to the salary grants for these post was to be received by the Petitioner from the State Government. In pursuance of this Government Resolution the Petitioner issued a composite advertisement dated 16 February, 2008 for filling 79 regular post and 30 contractual posts. Under this advertisement the Respondents applied for the non-teaching contractual post, 5 posts of Peon and 2 posts of Junior Clerk. The respondents are seven out of the 30 applicants who applied for the contract posts. The respondents were interviewed by a selection committee.

4. On 12th September, 2008 appointment orders were issued appointing the respondents on contract basis for a period of 11 months. This is an admitted position. The appointment order inter alia recorded that the appointment was being done in pursuance of the interview taken by the selection committee as constituted under the Standard Code 1984 on a Government approved post. The pay-scale was stated in clause (1) of the appointment order.

5. As the initial contract appointment of the respondents had come to an end after the expiry of eleven months, they were granted extension for a further period of 11 months and thereafter two extensions of three months. In this regard illustratively a reference can be made to the extension orders issued to Respondent No. 1 in Writ Petition No. 646/2013, dated 04/08/2009 (for eleven months period 16.08.2009 to 15.07.2010), extension order dated 26/07/2010 for eleven months or till a regularly selected candidate is appointed whichever is earlier, extension order dated 02/07/2011 and 04/10/2011 for three months or till a regularly selected candidate is appointed whichever is earlier.

6. In order to enable the Petitioner to have regular non teaching posts the State Government issued a fresh Government Resolution being Government Resolution dated 19th September, 2009 whereby approval was granted for creation of 210 posts for non-teaching employees. This was done after a decision and approval of the staffing pattern. The details pertaining to the creations of posts are set out in Annexure-A of this Government Resolution. A perusal of this Government Resolution shows that all these sanctioned non - teaching posts were to be filled up on regular basis and there was no provision made for contractual appointment as done in the previous Government Resolution dated 11th May, 2007.

7. In pursuance of this new Government Resolution dated 19th September, 2009 the Petitioner-University issued an advertisement dated 8th March, 2010 inviting applications to fill up these 210 non-teaching posts. It is an admitted position that the respondents applied under the new advertisement and participated in the selection process. However, as they could not qualify in the selection process they were not selected.

8. The concerned respondents also had made representations to the Petitioner that their services should be regularized. The Petitioner therefore had approached the Director of the Education (Higher Education) by its letter dated 11-03-2010 requesting that the thirty contract appointees appointed under the earlier Government Resolution dated 11.05.2007 be regularized. The Director of Education informed the Petitioners by his communication dated 26.03.2010 that the appointments of these respondents was on contract basis and that the approval of appointment was only to the contractual appointment as directed in the Government Resolution dated 11th May, 2007. It was stated that according to Government Resolution dated 19th September, 2009, 210 non-teaching posts were approved and therefore the contract appointees cannot be given any benefit. It was stated that the Petitioner-University should proceed to regularly fill up 210 non-teaching posts as per the rules. By a further communication dated 28th March, 2010 from the Divisional Joint Director of Education, Kolhapur Division, Kolhapur the request of the Petitioner to regularize the services of these contract appointees was again not accepted. This communication recorded that in fact the selection of the respondents was on contract basis under the advertisement dated 16th February 2008 and was not in accordance with the rules of contract appointments issued by the State Government. Detailed reasons in that regard were set out while refusing the request of the Petitioner University to regularize the services of the contract appointees. It was also recorded that the Petitioner cannot take any action, which is contrary to Section 8 of the Maharashtra Universities Act 1994 so as to impose a financial burden on the government in seeking regularization of the contract appointees.

9. The Petitioner sometime between 31st December, 2011 and 3rd January, 2012 issued appointment orders in pursuant to the regular selection process undertaken under the advertisement dated 8th March, 2010. Consequently, on 10th January, 2012 relieving orders to take effect from 10th February, 2012 were issued to all the thirty contract appointees including these seven Respondents.

10. These relieving orders were challenged by the respondents by approaching the University Tribunal by filing appeals under Section 59 under the Maharashtra Universities Act, 1994. The Respondent inter alia prayed in their respective appeals that the relieving order dated 10th January, 2012 be quashed and set aside and that they be reinstated in services along with all consequential reliefs. The Petitioner appeared in these appeals and filed its Written Statement. The petitioner contended that the petitioner being a University functioning under Maharashtra Universities Act 1994 was bound by the directives issued by the State Government as regards creation of post under the mandatory provisions of Section 8 of the Maharashtra Universities Act 1994. The Petitioner opposed the appeals filed by the respondents on the ground that the respondents did not have any legal right to seek reinstatement when their appointments were on contract basis. It was also contended that under the Government Resolution dated 11th May, 2007 these posts were to be filled up on contract basis and that even under the said Government Resolution no legal right could accrue to the

respondents. It was contended that by a subsequent Government Resolution dated 19th September, 2009, 210 regular posts of non-teaching staff were created and that a selection procedure was accordingly undertaken in which the respondents participated but failed. It was contended that apart from this there was no legal right in the respondents to seek any regularization/reinstatement. It was therefore contended that the Appeal filed by the respondents was per se not maintainable.

11. As the Joint Director of Education on behalf of the State Government was also impleaded as a respondent before the tribunal a written statement came to be filed on behalf of the State Government in the said appeals. The Joint Director contended that the Petitioner had made appointments of the respondents purely contract basis, on the contract posts created under the Government Resolution dated 11th May, 2007. It was stated that, however, even in making these contract appointments, the petitioner had not followed the norms prescribed by the State Government for making such contract appointments and that the same were not in accordance with the rules prescribed by the Government. It was stated that even the petitioner's method of payment of wages to the contractual appointees was not as per government norms and hence the appointments though on a contract basis were illegal. It was stated that by the Government Resolution dated 19th September, 2009 issued by the State Government after approval of the staffing pattern, 210 posts were created and accordingly process was initiated by the University as per rules to lawfully fill up these 210 non teaching posts. It was also pointed out that requests of the University on behalf of the contract appointees to consider regularizing the contract appointments was also rejected by the Directorate of Education by a communication dated 26th March, 2010 and 28th March, 2010. It was categorically stated that the Petitioner-University had no legal right to seek regularization of these contract appointees and that as the contractual appointments were for a stipulated a period they cannot be regularized. It was also stated that no financial burden can be imposed on the Government by an action on the part of the Petitioner in making these contract appointments contrary to the contract appointment norms of the Government.

12. The Learned Presiding Officer of the Tribunal by the impugned common judgment allowed the appeals filed by the respondents whereby the relieving order dated 10th January, 2012 issued by the Petitioner-University was quashed and set aside and the Petitioner was directed to reinstate the respondents with continuity in service.

13. With the assistance of the learned counsel for the parties, I have gone through the paper book on these Writ Petitions and the impugned orders passed by the University Tribunal.

14. Mr. Joshi, learned counsel for the Petitioner would urge that the Tribunal is in error in allowing the appeals filed by the concerned Respondents. He submits that the Tribunal has completely overlooked the nature of the appointment of the

respondents which was a contractual appointment. It is urged that only because initially a selection procedure of advertisement and interview came to be adopted by the University though in making contractual appointments it cannot be said that the contractual appointment becomes a regular appointment. He submits petitioner being a public body, even in making contractual appointments the Petitioner was justified in adopting this procedure. It is submitted that all the posts on which the Petitioner would make appointments are required to be sanctioned by the State Government in exercise of the powers under Section 8 of Maharashtra Universities Act 1994. He submits that it was incumbent on the University to strictly follow the provisions of Government Resolution dated 11th May, 2007 coupled with the rules and regulations as framed by the State Government in regard to making the appointment under the Government Resolution dated 11th May, 2007. He submits that the method in which the contract appointments were made by the Petitioner under the Government Resolution dated 11th May, 2007 was not acceptable to the Government. He submits that such irregularity on the part of the petitioner would in no manner confer any legal right to the Respondents who were appointed purely on contract basis to claim that they ought to be regularized. Mr. Joshi would urge that the terms and conditions of the appointment order and the extension order issued to the concerned respondents and accepted by them can leave two opinions that their appointment was a contractual appointment and that there was no right much a less a legal right to seek continuation in employment of the petitioner on the basis of the clear terms of the contract which was to come to an end by efflux of time. He further submits the respondents could not have claimed such reliefs before the tribunal in view of the fact that under a fresh advertisement dated 8th March, 2010 which came to be issued to make regular appointments under the Government Resolution dated 19th September, 2009 the respondents had applied, they however did not get selected and only thereafter they had approached the University Tribunal. It is urged that in fact before the concerned respondents applied to the petitioner under the new advertisement the Director of Education by his communication dated 26th March, 2010 and 28th March, 2010 had rejected the proposal of the petitioner to regularize and/or continue the thirty contract employees. It is urged that these facts clearly show complete act of acquiescence on the part of the concerned respondents and also show that all the respondents were fully aware that they have no legal right to continue on the contractual appointment. It is urged that in terms of these facts the respondents were clearly estopped from seeking a regularization. Mr. Joshi submits that it is a settled principle of law that the contract appointment can be no manner create vested right of regularization and such regularization would amount to seeking a for back door entry in public employment. In support of his submission he has relied on the Judgment of the Supreme Court Case of State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another, .

15. On the other hand Mr. Bandiwadekar, Learned counsel for the concerned Respondent No. 1 in all these Petitions submits that the Tribunal has

appropriately allowed the appeals filed by the concerned Respondents. He would urge that these respondents were subjected to an appropriate selection procedure namely an advertisement came to be issued to fill up vacant posts under which the respondents submitted their applications. He would submit that a selection committee came to be constituted which interviewed the respondents and only after the respondents were found to be eligible an appointment order though on contract basis came to be issued to them. He submits that appointments were made on clear vacant posts as is clear from the combined reading of the Government Resolution dated 11th May, 2007 and 19th September, 2009. He submits that it is an undisputed position that at all material times there were vacancies and that it was an obligation on the part of the Petitioner University to fill up these vacancies and hence the selection procedure having been followed to appoint the respondents it cannot be said that the appointments of the respondents was in any manner irregular and not in consonance with the rules and that it is not a regular selection in appointing them. He would urge that all facets of a regular appointment are clearly found in not only the respondents being given an appointment order though on contract basis but the continuation of their appointment by further extension upto February, 2010. He would submit that hence there were legal rights which were created in favour of the respondents for a regular appointment and the Petitioner could not have issued a relieving order dated 10th January, 2010 so as to terminate the services of the respondents.

16. Mr. Kango, the learned AGP appearing on behalf of Joint Director of Education submitted that appointments as made by the Petitioner were clearly contractual appointments. He has drawn the attention of the Court to the reply has filed on behalf of the State Government before the University Tribunal. He has also drawn the attention of the Court to a further affidavit filed in the present Writ Petitions in pursuance of the directions by this Court in its order dated 7th April, 2014. This Court by an order dated 7th April, 2014 after taking into consideration the Government Resolution dated 11th May, 2007 and 19th September, 2009 had directed the Secretary, Higher and Technical Education Department, Mantralaya to place on record under an affidavit as to whether it was permissible for the University to continue appointing the concerned Respondents on contract basis or otherwise and place on record a resolution or a decision to do away with appointing employees on contract basis. Mr. Kango learned Assistant Government Pleader has referred to the affidavit dated 17th July, 2014 of Shri Sanjay Kumar, Principal Secretary, Higher and Technical Education Department, Mantralaya, which accordingly came to be filed. This affidavit is a detailed affidavit in which it is urged that by the Government Resolution dated 11th May, 2007 guidelines were laid down in relation to the appointment of non-teaching staff and that under the said Government Resolution 30 posts were to be filled by University on contract basis. It is stated that if posts are not created by the Government the Petitioner cannot make any appointments unless and until the same has been approved by the Finance Department of the Government of Maharashtra. It is

submitted that the Government Resolution dated 19th September, 2009 created 210 regular posts of non-teaching staff, after approval of the staffing pattern which showed that there was no inclusion of 30 contract posts or continuation of any contract posts. Paras 3, 4 and 5 of the affidavit of the Principal Secretary, Higher and Technical Education Department of the Government of Maharashtra states as under:--

3. "I further say and submit that as per the terms and conditions laid down in the Government resolution dated 6th July, 2009 and considering the facts that even permission is given to fill up 90% reservation post and 50% open post as per G.R. dated 1st July, 2004, there was major shortfall in manpower in the Universities therefore, Government of Maharashtra, Higher and Technical Education Department, Mantralaya, Mumbai had taken decision regarding staffing pattern to be considered in case of non-teaching staff in the Dr. Babasaheb Ambedkar Marathwada Vidyapeeth, Swami Ramanand Tirtha Marathwada Vidyapeeth, Nanded Mumbai Vidyapeeth, Mumbai, Pune Vidyapeeth, Pune, Solapur University and other Universities laid down in the said Government Resolution wherein the information has been collected from all the respective University by the Government of Maharashtra in a respect of the requirement on the posts and number of the students in the respective Universities and affiliated colleges and staff pattern which is required in the said University and accordingly after examining the said information received from the respective department of the said University total 210 posts were sanctioned by the Government of Maharashtra, Higher and Technical Department, Mantralaya, Mumbai in the light of Government Resolution dated 6th July, 2009 in respect of approval to be given in Solapur University, Solapur for the sanction of 210 post on the required basis as per the terms and conditions laid down in the said government Resolution dated 19th September, 2009. I further say and submit that clause (2) of the said Government Resolution had also given the guidelines for defining the said 210 posts in the light of Government Resolution dated 6th July, 2009 as under:

"Out of 210 sanctioned posts, as per the staffing pattern, 150 posts has been already approved in the above subject matter and the remaining posts of the staffing pattern to be filled up by the Solapur University as under:

And accordingly, the permission has been granted by the said Government Resolution dated 19th September, 2009 for the respective posts in case of Solapur University. Hereto annexed and marked as "Exhibit 2" is the copy of the Government Resolution dated 19th September, 2009. I however say and submit that in the light of the position explained herein there is no inclusion of 30 contract basis posts as per Government Resolution dated 11th May, 2007 as 210 posts have been sanctioned by the Government as per the Government Resolution dated 19th September, 2009. I view of the stated herein above it clearly indicate that the post filled by the Solapur University is appears to be on contract basis as per the Government Resolution dated 11th May, 2007.

4. I respectfully say and submit that by letter dated 12th September, 2008, 04th

August, 2009, 26th August, 2010 issued by Solapur University addressed to the respondent had clearly indicates that he has been appointed for the post of Peon for the period of 11 months on the contract basis as per the terms and conditions laid down in the said letter dated 12th September, 2008, 04th August, 2009, 26th August, 2010 after expiry of the terms of contract, the service came to an end. Against the said order, the respondent had preferred an appeal before the Tribunal and the College Tribunal pleased to allow the said appeal filed by the respondent as the reasons recorded therein and directed the respondent to implement the said order. Against the said order dated 1.11.2012 passed by the College Tribunal Solapur University, the Respondent No. 1/present petitioner in this matter has challenged this order before the Hon''ble High Court.

5. I respectfully say and submit that since the said 30 posts which were filled up by the University on Contract basis cannot be regularized in the light of the ratio laid down by the Hon''ble Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, as temporary the casual, daily wages or contract basis have no right to claim on the permanent basis post assuming they are working on the said post as a temporary unless and until the said post are not sanctioned by the Government and the said post were also not filled up through recruitment procedure it cannot be treated as permanent post unless the procedure followed in the light of ratio of the Apex Court. I respectfully say and submit that in the light of the guidelines given by the Hon''ble Apex Court in various case, the Government department cannot be regularized or appoint any temporary employer without following due procedure of law as laid down in the Government Resolution dated 25th August, 2005 and guidelines laid down in the said Government Resolution. Hereto annexed and marked as "Exhibit I" is the copy of the Government Resolution dated 25th August, 2005.

In the premises and the facts stated herein above I respectfully say and submit that the impugned judgment and order dated 1st November, 2012 passed below Appeal No. 16 of 2012 passed by the learned College & University Tribunal, to quash and set aside in the interest of justice."

17. In a rejoinder affidavit of the respondents to this affidavit of the Principal Secretary, the respondents have disputed the contentions of the State Government to contend that the affidavit of the Principal Secretary is not in consonance of the directions of this Court in its order dated 7th April, 2014. However in para 5 of this rejoinder affidavit the respondents have conceded that by the Government resolution dated 19th September, 2009 regular appointments were being made. The following averments of the concerned respondents conceding to this position are relevant.

"...However while issuing the further Government Resolution on 6/7/2009 and 19/9/2009 for creating further posts for the University, the Government did not issue any order or direction that the said 30 posts which are directed to be filled on contract basis, should now be filled only on regular basis. The Government also did not issue any direction to the petitioner University that the employees

who are appointed on the said 30 posts on contract basis should be discontinued and in their place/posts new appointment should be made on regular basis."

18. Having considered the rival submissions as made on behalf of the respective parties it appears that there is much substance in the submissions of the learned Counsel on behalf of the petitioner that the tribunal could not have passed the impugned orders granting reinstatement to the respondent contract appointees. It is clear that these respondents were issued appointment orders which were appointments on contractual basis for a period of 11 months. A perusal of the Government Resolution dated 11th May, 2007 also indicates that the Petitioner University was acting under the Government Resolution to fill up 30 posts which were permitted to be filled up on contract basis. The Government Resolution dated 11th May, 2007 in no manner indicates that these 30 contractual appointments being permitted by the Government can be read to mean that in fact the Government had sanctioned regular 30 posts. This argument on behalf of the concerned Respondents if accepted would amount to reading something into the Government Resolution which is not provided for and expressly contrary to the contents of the said Government Resolution. It is not disputed that the respondents after their initial appointment on contract period of eleven months were granted extensions for further eleven months and three months respectively or till regular appointments are made whichever was earlier. This was accepted by the respondents. It cannot be said that these extensions would confer any legal rights to the respondents to seek a permanent post as an extension is not any acceptable method of appointment. The extension of contractual employment could not create any vested right to seek regularization by these respondents. It is further significant that these respondents were completely aware about their legal rights and that their appointments was only a stop gap arrangement being purely on contract basis for a fixed term, which is clear from the fact that the respondents having received the knowledge that they would be discontinued in view of the creation of new posts by Government Resolution dated 19th September, 2009 approached the Petitioner to seek regularization/continuation. The petitioner had hence approached the State Government by its proposal on behalf of these Respondents to regularize/continue the services of these contract appointees. This request was turned down by the State Government by its communication dated 26th March, 2010 and 28th March, 2010. Thereafter the respondents submitted their application under the fresh selection initiated by the petitioner under the advertisement dated 8th March, 2010 under which 210 regular posts were to be filled up. These applications were to be submitted by 7th April, 2010. The concerned respondents accordingly participated in the said fresh selection process, however they could not succeed in the said selection and only thereafter approached the Tribunal. Thus not only the respondents accepted the relieving order dated 10/01/2012 issued by the University but as a lame attempt to take a chance in asserting non-existing rights approached the Tribunal with a plea that their appointment be considered to be a regular appointment. In the light of these facts the

submissions as made on behalf of the respondents that a legal right had accrued to the respondents to seek reinstatement has no merit and deserves to be rejected.

19. Taking into consideration the entire set of facts right from the issuance of the Government Resolution dated 11th May, 2007 which permitted the Petitioner University to appoint contract appointees, the issuance of an appointment order clearly stating the respondents appointment is only for a period 11 months as contract appointees and the participation of these respondents in the new selection procedure leaves no manner of doubt that these respondents had no legal right whatsoever to seek any reinstatement/regularization or in any manner to assail the relieving order dated 10th January, 2010 issued by the petitioner. The Tribunal in passing the impugned order has completely overlooked the nature of the contractual appointment and the nature of legal rights as would exists in a contract appointee. The contract appointment orders along with the extension issued to the concerned respondents could not have created any legal right of a permanent appointment which was clear from a plain reading of the said orders. The respondents could not have resiled from the binding terms of these appointments orders and take a stand contrary to the same. Further the State Government is not the direct employer of the University employees and the role of the State Government comes into picture in the context of creation of posts for the University as provided in section 8 of the Maharashtra Universities Act, 1994. Section 8 of the Maharashtra Universities Act provides for control of State Government and Universities. In the context of the present case, the provisions of Section 8 are relevant and read as under:

"8. Control of State Government and Universities.

(1) Without prior approval of the State Government, the university shall not,

(a) create new posts of teachers, officers or other employees;

(b) revise the pay, allowances, post-retirement benefits and other benefits of its teachers, officers and other employees;

(c) grant any special pay, allowance or other extra remuneration of any description whatsoever, including ex gratia payment or other benefits having financial implications, to any of its teachers, officers or other employees;

(d) divert any earmarked funds received for any purpose other than that for which it was received;

(e) transfer by sale or lease immovable property;

(f) incur expenditure on any development work from the funds received from the State Government or University Grants Commission or any person or body for the purposes other than the purposes for which the funds are received;

(g) take any decision regarding affiliated colleges resulting in increased financial liability, direct or indirect, for the State Government.

(2) The university shall be competent to incur expenditure from the funds received from,--

(a) various funding agencies without any share or contribution from the State Government;

(b) fees for academic programmers started on self supporting basis;

(c) contributions received from the individuals, industries, institutions, organizations or any person whosoever, to further the objectives of the university;

(d) contributions or fees for academic or other services offered by the university;

(e) development fund, if any, established by the university;

for the purpose of--

(i) creation of posts in various categories for specific period;

(ii) granting pay, allowances and other benefits to the posts created through its own funds provided those posts are not held by such persons who are holding the posts for which Government contribution is received;

(iii) starting any academic programme on self-supporting basis;

(iv) incurring expenditure on any development work,

without referring the matter for approval of the State Government, provided there is no financial liability, direct or indirect, immediate or in future on the State Government.

(3) The State Government may in accordance with the provisions contained in this Act, for the purpose of securing and maintaining uniform standards, by notification in the Official Gazette, prescribe a Standard Code providing for the classification, manner and mode of selection and appointment, absorption of teachers and employees rendered surplus, reservation of posts in favour of members of the Scheduled Castes, Scheduled Tribes, (Denitrified Tribues (Vimukta Jatis) & Nomadic Tribes) and Other Backward Classes, duties, workload, pay, allowances, post-retirement benefits, other benefits, conduct and disciplinary matters and other conditions of service of the officers, teachers and other employees of the universities and the teachers and other employees in the affiliated colleges and recognised institutions (other than those managed and maintained by the State Government, Central Government and the local authorities). When such Code is prescribed, the provisions made in the Code shall prevail, and the provisions made in the Statutes, Ordinances, Regulations and Rules made under this Act, for matters included in the Code shall, to the extent to which they are inconsistent with the provisions of the Code, be invalid.

(4) In case of failure of the university to exercise powers or perform duties specified in Section 5 or where the university has not exercised such powers or performed such duties adequately, or where there has been a failure to comply

with any order issued by the State Government, the State Government may, on making such enquiry as it may deem fit, issue a directive to the university for proper exercise of such powers or performance of such duties or comply with the order, and it shall be the duty of the university to comply with such direction:

(Provided that in case the University fails to comply with the directives the State Government shall call upon the University to give reasons in writing why the directives were not complied with. If the State Government is not satisfied with the explanation it may refer the matter to the Chancellor for taking necessary action under sub-sec. (3) of Section 9).

(5) The State Government may carry out test audit or full audit of the accounts of an university, college, school or institution regularly at such intervals as the State Government may deem fit."

(Emphasis supplied)

20. It is therefore apparent from the aforesaid provision that the State Government has sufficient control in respect of creation of posts and for proper management of the funds disbursed to the University in regard to the category of post created, as such post which are created for the University are eligible for receipt of funds from the State Government. The University in respect of creation of posts, the appointment on such posts and the disbursement of funds in that regard by the State Government is required to act within this statutory framework. Looking at the statutory scheme of Section 8 it cannot be held that the University can independently take decisions so as to disturb the nature of the posts or appointments as made under the directions of the State Government. The University is required to strictly abide by the directives issued by the State Government in that regard. In the present case the Petitioner has rightly adhered to this mandate of section 8 of the Maharashtra Universities Act, in approaching the State Government on the grievance of the contract appointees as to whether they can be continued. The State Government in its wisdom had taken a decision taking into consideration all facets and the requirement of a public policy and declined to entertain the request of the Petitioner and that of the Respondents. No fault can be found in the said actions of the State Government when they completely lie within the powers as conferred on the State Government under section 8 of the Act. Further it cannot be said that the action of the State Government or the University is in any manner arbitrary. It was therefore patently misconceived for the concerned respondents to assert any legal rights on the basis of the Government Resolution which created posts for the Petitioner - University. Issuance of such directions under Section 8 of the Maharashtra Universities Act, 1994 was a matter purely within the domain of the Government in the context of the requirement of the University. The respondents had no locus of any nature to have any expectation from the State Government as to the manner in which Government should exercise its powers under Section 8 of the Maharashtra Universities Act, 1994 in regard to the creation of post and their nature. If the argument of the concerned respondents is accepted it would be

nothing short of nullifying or abdicating the powers and the wisdom of the State Government to act in a manner as prescribed by the provisions of Section 8. The respondents had no higher rights than what had accrued to them in terms of their contractual appointment which were accepted by them in totality as observed above. The tribunal has failed to take into consideration this legal position while giving undue importance to vacancy of post and initial selection process, when admittedly, whatsoever selection process was adopted to appoint these respondents, the fact remained that the respondents were appointed on contract basis. The Tribunal hence could not have held that the Government Resolution dated 11th May, 2007 and 19th September, 2009 created any legal right in the concerned respondents to seek regularization of their contract appointments.

21. Mr. Bandiwadkar, learned Counsel for the respondents has relied on the decision of the Division Bench of this Court in the case of Sachin Ambadas Dawale and Others Vs. The State of Maharashtra and Director of Technical Education, . In this case the Division Bench was dealing with Lecturers in different departments in the Government Polytechnic College who were appointed as per the policy of the Government of Maharashtra under the Government Resolution dated 25th July, 2002. The grievance of the petitioner was that though they have been in employment under the Government Resolution for a period from three years to ten years they were not given permanency and the benefit of permanent appointment. The Division Bench considering the factual matrix as arising in regard to the appointments which were required to be made in the technical institutions and that for more than about 10 years the Government had not taken any steps to hold any selection through the M.P.S.C. held that it cannot be said that the appointments of these respondents were not on regular basis when all the employees were continued for long years and that many of them have become age barred. The observations of the Division bench in paras 14 and 15 of the decision throw considerable light on the controversy which read as under:--

"14. In the facts of the present case, the Government did not hold selection through MPSC for a period of more than 10 years and selected the Lecturers only through the selection process as provided under the said Government Resolution and the petitioners were duly selected through that process. The respondent-State has extracted the work from the petitioners for years together. Now, by efflux of time and on account of the respondent-State not holding the selection process for years together, many of the petitioners have become overaged and would not be in a position to participate in the selection process through MPSC. It could be clearly seen that the issue before the Apex Court in case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, was pertaining to the appointments which were made clandestinely and without advertisement and the persons were appointed without following due selection process. The facts of the present case are totally different. In the present case the petitioners have been appointed after the posts were advertised, they were selected in a selection

process by Committee of Experts duly constituted as per the said Government Resolution. In that view of the matter, the law laid down by the Apex Court in the case of Secretary, State of Karnataka and Ors. v. Umadevi and Ors. (supra) would not be applicable to the facts of the present case.

15. The submission of the Government of Maharashtra that whether the posts should be filled in on regular basis or contractual basis is a matter of policy and falls within the domain of the Government of Maharashtra (employer), does not appeal to us. It being an admitted position that the posts in which these employees have been appointed and continued for a considerable length of time on contractual basis, are regular and full time posts, the appointments in these posts cannot be at the whims and fancies of the Government of Maharashtra. The State cannot adopt a policy of hire and fire or use and throw."

It is in this context in considering the law laid down by the Supreme Court the Division Bench had come to the conclusion that the benefit of permanency be granted to the Petitioners in that case. The facts in the present case are however absolutely different. It is not the case that the concerned respondents were continued for long years without termination. At the onset of the regular selection they were relieved by an order dated 10th January, 2010. Representation in that regard as made by the petitioner was also rejected by the State Government. Thereafter they participated in the fresh selection process undertaken under the advertisement dated 8th March, 2010 and failed and then approached the University Tribunal with a plea of reinstatement. This judgment as relied by the learned counsel for these respondents is of no assistance to the concerned respondents in the facts of the present case.

22. On behalf of the petitioner in support of the submission that the respondents would be bound by the terms and conditions of the appointment/order reliance is placed on the decision of the Supreme Court in case of State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another, is apposite. The decision concerned a contractual appointment on a project, the Supreme Court has held that the contract appointee would not have any lien. In para 9 the Supreme Court observed as under:

9. "There can be no dispute with respect to the settled legal proposition that in the event that a person is not appointed on a regular basis and if his service is not governed by any statutory rules, he shall be bound by the terms and conditions that have been incorporated in the appointment letter (vide State of Punjab and others Vs. Surinder Kumar and others, . In such an eventuality, there can be no reason with respect to why the terms and conditions incorporated in the appointment letter should not be enforced against such an employee. In the instant case, Respondent 1 was temporarily appointed in a project and thus, she had at no point of time been appointed on a regular basis, owing to which she cannot claim any lien with respect to the said post."

23. It is a settled position in law as laid down in catena of judgments of the

Supreme Court that the contract appointees can have no any legal right to seek regularization. If it is clear that the appointment was purely as an ad hoc appointment for a fixed period then in that case such employee would not have any legal right to seek regularization so as to change the method of appointment in public services in a manner unknown to law. A useful reference can be made to decision of the Supreme Court in the case of Vidyavardhaka Sangha and Another Vs. Y.D. Deshpande and Others, the Supreme Court has observed as under:

"4. It is now well-settled principle of law that the appointment made on probation/ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said posts for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employees or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and person holding such post have no right to continue on the post and ask for regularisation etc.,...."

24. In the case of Surendra Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Others, " in dealing with a case of a contract appointee who was granted extensions from time to time the Supreme Court has held that equal opportunity is the basic feature of our Constitution and that public employment is repository of the State Power. It is held that the constitutional scheme clearly envisages equality of opportunity in public employment and that in view of the clear and unambiguous constitutional scheme the Court cannot countenance appointments to public office which have been made against the constitutional scheme. It is held that improper for the Court to give directions for regularization of the services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee. It is held that regularization of contractual employee there is no room for back door entry in the matter of public employment.

25. In the Constitution Bench decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, " in the context of contract appointments the Supreme Court in para 43 has observed as under:

"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 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 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 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 and 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, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of 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 directions 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."

(Emphasis supplied)

26. Adverting to this settled position in law the submissions as made on behalf of the respondents that the extensions to the contract employment granted by the Petitioner would confer a legal right to seek permanency in the employment or regularization of their services is wholly unsustainable. The extension granted to these respondents can in no manner change the nature of the contractual appointment. Moreover claiming regularization on the basis of the extension

accepting initial contractual appointment would amount to nothing short of a back door entry which is wholly opposed to the constitutional scheme of public appointments. For the reasons aforementioned the inevitable result is that the impugned orders dated 1st November, 2012 passed by the University Tribunal as challenged in each of these petitions cannot be sustained and the same are quashed and set aside, as also, the appeals filed by the concerned Respondents before the University Tribunal stand dismissed. Writ petitions accordingly stand allowed in terms of prayer clause (b). Parties to bear their own costs.