
(2022) 10 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No. 1592, 1609, 2371, 2372, 2373, 2374 Of 2020, 2411, 2412, 2413, 2414, 2415 Of 2021

State Of Maharashtra And Others

APPELLANT

Vs

Santosh And Others

RESPONDENT

Date of Decision : 13-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 16, 309, 315
Administrative Tribunals Act, 1985 — Section 19, 76

Citation : (2022) 10 BOM CK 0084

Hon'ble Judges : A.S. Chandurkar, J;Urmila Joshi-Phalke, J

Bench : Division Bench

Advocate : M.G.Bhangde, K. R. Deshpande, R.L.Khapre, M. R. Johrapurkar

Final Decision : Allowed/Dismissed

Judgement

A.S.Chandurkar, J

1. In this batch of writ petitions a challenge has been raised to the direction issued by the Maharashtra Administrative Tribunal, Nagpur (for short, the Tribunal) to regularise the services of 25 Lecturers in various colleges in the faculty of Arts that are administered by the State Government as well as to confer permanency to them. It has been further directed that the said Lecturers would be entitled for regular salary from 01.10.2019 but would not be entitled to claim any monetary benefits for the services rendered by them earlier. The benefit of continuity in service has been granted for all other purposes. Consequentially the process of recruitment initiated by the State Government through the Maharashtra Public Service Commission (MPSC) has been quashed to the extent of the posts held by the aforesaid Lecturers.

The Lecturers in turn have sought monetary benefits based on the relief of regularisation which relief was denied by the Tribunal.

2. The facts relevant for considering the challenge as raised to the order passed

by the Tribunal is that on 25.07.2002 the State Government through the Higher and Technical Education Department issued a Government Resolution noting that since the year 1998 there was a ban on recruitment in view of such decision taken by the Finance Department. As a result, it was not possible to fill in various posts in Government Aided Educational Institutions. This had affected the education of the students. In the year 2001-02, permission had been granted to fill in 50% of the vacant posts. However, all the posts could not be filled in as a result of which 6543 posts were vacant in the academic session 2002-03. Since it was found that as a result of the posts remaining vacant the education of the students was being affected, it was resolved to fill in two-third of the said vacant posts by making temporary appointments on contractual basis. It was stated that such appointments would be for a maximum period of two years on contractual basis or till the period regularly selected candidates were available. The appointees were required to have passed the National Eligibility Test (NET) / State Eligibility Test (SET). A Selection Committee was directed to be constituted at each University as well as in Senior Colleges for making such appointments. In addition, social reservation was also required to be followed.

3. Pursuant to the aforesaid Government Resolution an advertisement was issued on 15.09.2003 by the Director of Arts inviting applications to fill in the posts of Lecturers on contractual basis. Similar advertisements were also issued on 08.12.2005 and 13.12.2007. The Lecturers herein responded to the said advertisements and they were accordingly issued orders of appointment for a period of eleven months on contractual basis. Each lecturer was required to sign an agreement in which the terms and conditions of the Government Resolution dated 25.07.2002 were incorporated.

4. The appointments of the Lecturers on contractual basis were extended from time to time on the same terms and conditions. On 08.02.2006 the Higher and Technical Education Department issued a Government Resolution in which the benefit of leave to such contractual appointees was sought to be given. It was however clarified that when the services would come to end, the leave that remained unutilised would not be permitted to be encashed. Thereafter on 20.12.2007 the said Department renewed the contractual appointment of various Lecturers on the same terms and conditions. On 16.03.2009 another Government Resolution came to be issued by which the amount of honourarium of Rs.8,000/-per month was enhanced to Rs.12,000/- per month from 01.04.2009. Yet again on 05.05.2011 after noting that the nature of duties of the contractually appointed Lecturers were similar to regularly appointed Lecturers alongwith working hours, it was resolved to enhance the honourarium from Rs.12,000/- to Rs.24,000/- per month. This was followed by another Government Resolution dated 12.10.2011 enhancing the amount of honourarium to the Lecturers herein.

On 22.01.2009 the Medical Education and Drugs Department of the State of Maharashtra as a special case directed regularisation of services of contractually

appointed Lecturers at the Government Medical and Dental College. This benefit was made available to such staff that was appointed prior to 15.01.2007. The Higher and Technical Education Department on 27.06.2014 regularised the services of Lecturers in Group A. The Tribal Development Department on 08.07.2014 took a decision to regularise the services of 414 appointees on various vacant posts. On 25.07.2014 temporary appointment of 46 Lecturers was permitted by the said Department. Similarly, the Higher and Technical Education Department on 12.03.2015 permitted appointment of 72 posts on contractual basis.

5. The Higher and Technical Education Department in compliance of the judgment of this Court in Sachin Ambadas Dawale and others Vs. State of Maharashtra and another [2014 (2) Mh.L.J. 36] regularised the services of 62 contractual lecturers on 14.01.2015 and 317 contractual lecturers on 13.03.2015. The Lecturers herein had made a representation seeking similar reliefs. There was no response to the same and hence the Lecturers filed various Original Applications under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief of regularisation and permanency on the post of Lecturer on which they were appointed on contractual basis. According to them, by the orders dated 25.07.2014 and 12.03.2015 though the appointment on contractual basis was permitted, it was directed that no further extension should be granted. The Lecturers relied upon the decision of the Division Bench of this Court in Sachin Ambadas Dawale and others (supra) by which the services of similarly placed ad hoc employees who had been appointed pursuant to the Government Resolution dated 25.07.2002 had been directed to be regularised. The Tribunal initially on 28.04.2015 granted ad-interim relief and directed the State Government not to discontinue the services of the Lecturers until further orders. In the meanwhile, on 13.04.2016 the MPSC issued an advertisement seeking to recruit Lecturers at Government Arts Colleges. The Lecturers herein thus moved fresh applications seeking interim relief so as to restrain the State Government from making any appointments pursuant to the said advertisement. On 05.05.2016 the Tribunal granted interim relief and directed the State Government not to conduct further recruitment process in terms of the advertisement dated 13.04.2016 with regard to the posts held by the Lecturers herein.

6. The State Government filed its reply before the Tribunal and took the stand that though the Lecturers were duly qualified and appointed against the sanctioned posts, their recruitment fell within the purview of MPSC and as the said Lecturers were not selected by the MPSC under a regular process of selection, their appointments were illegal. It may be stated that the Lecturers in the meanwhile had amended the Original Applications and had also prayed for setting aside the process of recruitment initiated by the State Government through the MPSC.

The Tribunal considered the matter in the light of the pleadings of the parties.

Placing reliance on the decision in Sachin Ambadas Dawale and others (supra) it was noted that the Government Resolution dated 25.07.2002 pursuant to which the Lecturers were appointed was also the subject matter of consideration in the aforesaid decision. It noted that the services of the Lecturers were governed by the same Government Resolution. There was no selection made by the MPSC but the selection had been made by a Selection Committee as indicated in the said Government Resolution. The Tribunal also referred to the decision in Arjun Singh and others vs. State of Himachal Pradesh [(2015) 15 SCC 713] and thereafter proceeded to grant the relief of regularisation to the Lecturers with a direction to absorb them in service within a period of three months. However, monetary relief as claimed by the Lecturers was denied to them. Being aggrieved by the aforesaid decision, the State Government has challenged the same in Writ Petition Nos. 1609/2020, 1592/2020, 2371/2020, 2372/2020, 2373/2020 and 2374/2020. The Lecturers being aggrieved by the non-grant of monetary relief have filed Writ Petition Nos. 2411/2021, 2412/2021, 2413/2021, 2414/2021 and 2415/2021 and have prayed that they be held entitled to such monetary relief.

7. Shri M.G.Bhangde, learned Senior Advocate for the State Government in support of the challenge to the order passed by the Tribunal granting the relief of regularisation submitted that the Tribunal erred in granting such relief. The appointment of the Lecturers was purely as a stopgap arrangement with a view to ensure that there was no loss caused to the students on account of various posts of Lecturers lying vacant. The Government Resolution dated 25.07.2002 clearly stipulated that the appointment on such posts was to be made on contractual basis for a period of eleven months and on a fixed amount of honourarium. Each Lecturer had been appointed on contractual basis pursuant to the advertisements as issued and the Lecturers had thereafter executed bonds wherein it was clearly indicated that their appointments were on contractual basis. The Lecturers did not challenge the said Government Resolution but in fact relied upon the same while being appointed. In absence of any legal right to be regularised or the grant of relief of permanency, the Tribunal was not justified in granting such relief. Inviting attention to the Recruitment Rules for the post of Lecturer as published by the Notification dated 16.02.1983, it was submitted that the said Rules were framed in exercise of powers conferred by Article 309 of the Constitution of India. In the said Rules, it was specifically provided that the appointment on the post of Lecturer in a Government Art Institute was pursuant to the selection being made by the MPSC. It was undisputed that each Lecturer was not appointed in the manner prescribed by the said Recruitment Rules. On that basis it was submitted by relying on the decision in Arjun Singh and others (supra) that the appointments therein having been made by the State Public Service Commission entitled the appellants therein to the relief of regularisation. The Tribunal erred in placing reliance on the said decision while granting relief to the Lecturers. Inviting attention to the decision in Sachin Ambadas Dawale and others (supra) it was submitted that the relief granted therein was in the peculiar facts of that case. The ratio of the said decision could not have been applied in

the facts of the present case for various reasons. He submitted that the Division Bench which had decided the aforesaid case had itself clarified its decision in Sachin Ambadas Dawale and others (supra) while passing an order in Civil Application (W) No.828 of 2017 in that case on 27.04.2017. It had been clarified that the judgment in Sachin Ambadas Dawale did not lay the ratio that persons who were appointed on purely contractual or temporary basis without following the due selection process as laid down by the Hon'ble Supreme Court in Secretary, State of Karnataka and others Vs. Umadevi and others [(2006) 4 SCC 1] were entitled for regularisation. In that context reference was also made to the observations in paragraphs 15 to 17, 45 to 47 as well as paragraphs 52 to 54 of the decision in Umadevi and others (supra). On the aspect as to whether the Lecturers could claim that their appointment was merely irregular or not illegal, the learned Senior Advocate referred to the decision in National Fertilizers Limited and others vs. Somvir Singh [(2006) 5 SCC 493] and submitted that if the Recruitment Rules had not been followed, the appointment could not be treated to be irregular. The Lecturers having accepted their contractual appointment and having discharged duties accordingly, they were estopped from challenging such nature of contractual appointment and for said purpose reliance was placed on the decision in State of Maharashtra and others vs. Anita and another [(2016) 8 SCC 293].

8. It was then submitted by the learned Senior Advocate for the State Government that the judgment of the Division Bench in Sachin Ambadas Dawale and others (supra) had been distinguished in various subsequent decisions by other Division Benches of this Court. Inviting attention to the decision in Rajesh A Bharte and others vs. Union of India and another [(2018) SCC Online Bom 2905] it was submitted that the said decision could not have been relied upon by the Tribunal for granting the relief of regularisation. Reference was also made to the decision in Hareshbhai Mohanbhai Patel and others vs. Union of India and others [2018 (6) Mh.L.J. 185]. It was also submitted that in Mahesh Madhukar Wagh and others vs. State of Maharashtra and others [2019 (6) Mh.L.J. 8], Hon'ble Shri B.R.Gavai, J.(as His Lordship then was) had observed that the decision in Sachin Ambadas Dawale and others (supra) to which His Lordship was a party was being widely mis-quoted. That judgment was sought to be explained by observing that the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It was further observed that if it was known to all probable candidates that the appointments that were to be made for a temporary period were to be subsequently regularised, many other eligible candidates who had otherwise not applied but were eligible could have also applied for appointment. If an order of regularisation was passed it would be in contravention of Article 14 of the Constitution of India. The decision in Union of India and another Vs. Lalita V. Mertia [(2022) 1 CLR 833] was referred where another Division Bench considered the decision in Sachin Ambadas Dawale and others (supra) as clarified in the subsequent decision in Mahesh Madhukar Wagh and others

(supra) and it was observed that the decision in Sachin Ambadas Dawale and others (supra) must be held to be a decision which turns on its own facts. The aspect that there could be candidates having equal or better qualifications than those appointed on contractual basis but may not have applied for appointment since such appointment was for a short period would be prejudiced if the relief of regularisation would be granted was highlighted. On this basis it was submitted that decision in Sachin Ambadas Dawale and others (supra) having been clarified by the same Division Bench which decided that case and having been explained in the subsequent judgment in Mahesh Madhukar Wagh and others (supra), the ratio that judgment would not be applicable to the case in hand. In the present case, the Lecturers were appointed pursuant to three advertisements issued by the Higher and Technical Education Department while in the case of Sachin Ambadas Dawale and others (supra) there was only one advertisement pursuant to which the appointments had been made. The Tribunal erred in basing its decision on the decision in Sachin Ambadas Dawale and others (supra).

On the aspect of monetary relief claimed by the Lecturers which relief was denied by the Tribunal, the learned Senior Advocate placed reliance on the decision in State of Haryana and others vs. Charanjit Singh and others [(2006) 9 SCC 321] wherein it was held that persons selected by the Selection Committee on the basis of merit with due regard to the seniority can be granted a higher pay-scale as they have been evaluated by a Competent Authority and in such cases, the payment of higher pay-scale cannot be challenged. Persons employed on contractual basis could not claim equal pay on the basis of equal pay for equal work. Referring to the decision in State of Madhya Pradesh and others Vs. Ramesh Chandra Bajpai [(2009) 13 SCC 635] it was submitted that for invoking the said doctrine there has to be wholesale identity between the holders of two posts. It was thus submitted that the Lecturers were not entitled for any monetary relief whatsoever much less relief of regularisation of services and permanency.

9. Attention was then invited to the affidavit filed on behalf of the Dean, Government of Arts and Design College dated 02.08.2022 in which it was stated that pursuant to the Government Resolution dated 08.07.2020 issued by the Higher and Technical Education Department, 135 posts of Lecturers were being abolished. The said posts pertained to Arts Colleges including the Government Art and Design College, Nagpur. It was noted that on the said 135 posts, 27 Lecturers were regularly appointed while on 26 posts contractual Lecturers were working and on 11 posts seasonal temporary Lecturers were working. The continuation of contractual and temporary Lecturers was pursuant to the interim orders passed by the Courts and as and when those posts become vacant, such vacant posts would be filled in on the basis of qualifications and eligibility prescribed by the All India Council for Technical Education (AICTE). On the basis of this Government Resolution, it was urged that there was no sanctioned post available on which the appointment of the Lecturers herein who were 25 in number could be regularised. It was further submitted that in the absence of the

MPSC being impleaded as a party before the Tribunal, no relief based on its advertisement could be claimed by the Lecturers. Referring to the provisions of Article 315 of the Constitution of India it was submitted that the Public Service Commission was an independent constitutional authority and it could not be termed as an agent of the State Government. Since its advertisement was subjected to challenge, the MPSC ought to have been impleaded as a party to the proceedings before the Tribunal.

Thus on the basis of aforesaid submissions it was urged on behalf of the State Government that the order passed by the Tribunal be set aside and the Original Applications be dismissed.

10. On the other hand Shri R.L.Khapre, learned Senior Advocate for the Lecturers supported the order passed by the Tribunal to the extent the relief of regularisation and absorption was granted. According to him, the Tribunal was justified in relying upon the decision in Sachin Ambadas Dawale and others (supra) inasmuch as sanctioned posts were existing as indicated by the Government Resolution dated 25.07.2002. The Lecturers were appointed pursuant to advertisements issued and after having been interviewed by the Committee as stipulated. Since the appointment of the Lecturers no steps were taken by the MPSC to make any regular appointment and it was only on 13.04.2016 that the MPSC issued an advertisement after about fourteen years. By that period the Lecturers herein had crossed the upper age limit as prescribed and were thus not eligible to participate in that process. The recruitment now sought to be undertaken by the State Government was through the MPSC and it was not necessary to implead the MPSC as a party before the Tribunal. The aspect that the MPSC was a necessary party was not raised before the Tribunal and the same could not be permitted to be raised now for the first time. MPSC merely acted as an agent of the State while undertaking recruitment. Referring to various Government Resolutions issued from time to time it was submitted that service benefits such as leave, etc. were made available to the contractual Lecturers. Their monetary honourarium was also enhanced from time to time after noticing that they were discharging similar duties as were being discharged by the Lecturers appointed through the MPSC. It was pointed out that in various other Departments of the State Government the services of such temporary and contractual appointees had been regularised and there was no reason to deprive the Lecturers herein of such benefit. Irrespective of the Department in which such temporary and contractual appointees were serving, they all formed a class in themselves. The State Government could not be permitted to discriminate between such employees of various departments. Their appointment was made through a Selection Committee as constituted under the Government Resolution and hence it could not be said that their appointments were illegal. Even if it was assumed that the appointment of the Lecturers was irregular in any manner they could not be deprived of the relief of regularisation as granted by the Tribunal.

11. It was then submitted that the State Government as a model employer could

not be permitted to act in an arbitrary manner by denying the relief of regularisation of services. Inviting attention to the interim order passed by the Hon'ble Supreme Court in *Radha Dubey Vs. Government of NCT Delhi* dated 16.08.2010 wherein it was prima facie observed that the appointment of a person on contractual basis for an uninterrupted period of ten years amounted to exploitation, it was urged that as a model employer the State Government could not take advantage of its superior position. In the light of the decision of the Hon'ble Supreme Court in *A.Umarani Vs. Registrar, Co-operative Societies and others* [(2004) 7 SCC 112] the State Government on 25.08.2005 issued a Circular in which it was stated that all necessary steps should be taken to ensure that the appointment on sanctioned posts ought to be made through the procedure prescribed and in accordance with law. Only if it was extremely urgent or necessary that an appointment could be made for a temporary period. It was also necessary to clarify that if request was made for regularisation of services, such employees should be informed that the request would not be accepted. Despite issuance of aforesaid Circular, the State Government itself issued various subsequent Government Resolutions in breach of that Circular and permitted appointments to be made on contractual basis for a temporary period. As a model employer it was not permissible for the State Government to disregard the law of the land. Since the State Government itself did not follow the directions that were issued by the Hon'ble Supreme Court in *A.Umarani* (supra), it could not be permitted to rely upon the decision in *Umadevi and others* (supra) for denying the relief of regularisation to the Lecturers. In that regard, the learned Senior Advocate for the Lecturers also placed reliance on the decision in *Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmachari Sanghtana* [(2009) 8 SCC 556], *State of Karnataka and others Vs. M.L.Kesari and others* [(2010) 9 SCC 247], *Narendra Kumar Tiwari and others vs. State of Jharkhand* [(2018) 8 SCC 238] and *Union of India and others Vs. Central Administrative Tribunal* [(2009) 4 SCC 290]. It was also submitted that each Lecturer had obtained the requisite qualifications as prescribed by AICTE. While the educational qualifications to be considered ought to be as prescribed by the AICTE, the service conditions as prescribed by the University Grants Commission Regulations would operate. Reference in this regard was made to the observations in paragraph 27 of the decision in *Association of Management of Private Colleges Vs. All India Council for Technical Education and others* [AIR 2013 SC 2410]. Referring to the decision in *Central Inland Water Transport Corporation Limited and another Vs. Brojo Nath Ganguly and another* [(1986) 3 SCC 156], it was submitted that the appointment and continuation of a Lecturer on contractual basis amounted to exploitation by the State. He also referred to the decision in *Delhi Transport Corporation vs. DTC Mazdoor Congress and others* [1991 SUPP. (1) SCC 600]. It was also pointed out that each Lecturer was discharging regular duties and some of them had been appointed as external and internal examiners from time to time. The services of similarly placed lecturers and other employees from other Departments of the State Government having been regularised, there was no reason to deny such relief to the Lecturers

herein. The distinction sought to be made by the State Government of the decision in Sachin Ambadas Dawale and others (supra) was incorrect. The Lecturers herein were similarly situated as the Lecturers in Sachin Ambadas Dawale and others (supra), they having been appointed pursuant to the Government Resolution dated 25.07.2002. Each Lecturer was appointed by a duly constituted Selection Committee and had the requisite qualifications that were prescribed for regular appointment.

It was further submitted that since the Lecturers were working on sanctioned posts and were discharging similar duty as was being discharged by regularly appointed Lecturers through the MPSC, they were entitled to the relief of regular salary alongwith other monetary benefits. The Tribunal declined to grant that relief without assigning any justifiable reason. Since the Lecturers were entitled to the relief of regularisation and permanency, there was no justification whatsoever to refuse to grant them monetary relief. At the most such relief could be restricted for a period of three years prior to filing of the Original Applications. In that regard reference was made to the decision in Jai Dev Gupta Vs. State of Himachal Pradesh and another [AIR 1998 SC 2819] and Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648].

It was thus submitted on the basis of aforesaid contentions that since the Lecturers herein had served for a period ranging from seven to ten years, the Tribunal was justified in granting the relief of regularisation. Such relief ought to be however granted by treating the said Lecturers as Assistant Professors with all monetary benefits. It was thus submitted that while upholding the partial relief granted by the Tribunal, the Lecturers were also entitled to the monetary relief as prayed for.

12. We have heard the learned counsel for the parties at length and with their assistance we have perused the documentary material placed on record. We have also given our due consideration to the rival submissions. The facts on record indicate that the contractual appointment of each Lecturer in service is pursuant to the advertisements issued on 15.09.2003, 08.12.2005 and 13.12.2007. This advertisement was in the light of the Government Resolution dated 25.07.2002 issued by the Higher and Technical Education Department of the State of Maharashtra. It was stated therein that since 1998 there was a ban on recruitment as a result of which various posts at the Government Higher and Technical Institutions were lying vacant. This was affecting the education of the students in the said Institutions. In the academic year 2002-03 about 6453 posts were vacant and hence it was resolved to fill in two-third of those posts on contractual basis. Under the said Government Resolution appointments were to be made for a fixed period of two years or till a duly selected candidate from the MPSC was available. Monthly honourarium of Rs.8,000/- was liable to be paid and each candidate was required to execute a bond in that regard. Pursuant to the said advertisement, the Lecturers herein participated in the said process and were issued appointment orders on contractual basis for a period of eleven

months. Such engagement of the Lecturers continued from time to time and they were also granted the benefit of leave pursuant to a Circular dated 08.02.2006. Thereafter honourarium paid to the Lecturers was increased from Rs.8,000/- per month to Rs. 12,000/- per month from 01.04.2009 and thereafter from Rs.12,000/- per month to Rs.24,000/- per month from 05.05.2011.

The Lecturers then found that as similar appointments made in other Departments of the State Government had been regularised, they made representations to the State Government seeking regularisation of their appointments. In response to the representations as made, the Lecturers were informed that their services cannot be regularised and that further appointments on contractual basis would be undertaken by the State Government. Being aggrieved by the non-consideration of their request for regularisation, the Lecturers approached the Tribunal seeking the relief of extension of the benefit of regularisation of their services alongwith all consequential benefits.

13. The Tribunal in the impugned judgment has placed heavy reliance on the judgment of the Division Bench in Sachin Ambadas Dawale and others (supra) and has found that the Lecturers were entitled to similar relief. In the light of that adjudication in Sachin Ambadas Dawale and others (supra), the Tribunal directed the State Government to regularise the services of the Lecturers and confer permanency on all of them. It however did not grant any monetary benefit for the service rendered earlier and directed their entitlement to regular salary from 01.10.2019. Since the impugned judgment is based on the decision in Sachin Ambadas Dawale and others (supra) and the learned Senior Advocate for the Lecturers has sought to support the judgment of the Tribunal by relying upon the same, it would be necessary to first refer to the said decision. Therein the lecturers from Government Polytechnic Colleges in the State were appointed pursuant to the Government Resolution dated 25.07.2002 as modified on 02.08.2003 and 03.10.2003. The said lecturers were appointed pursuant to Notification dated 25.08.2003 by which applications from eligible candidates were invited. The candidates were interviewed by the Selection Committee constituted under the Government Resolution dated 02.08.2003. The candidates selected were appointed on contractual basis on a fixed sum of honourarium. These appointees sought the relief of regularisation. The Division Bench noted that though the said lecturers were appointed on contractual basis in view of Government Resolution dated 25.07.2002, their appointment was pursuant to issuance of an advertisement and holding of an interview by a duly constituted Selection Committee. Till the year 2010 the State Government continued with making contractual appointments and during that period the MPSC did not conduct any selection process. It was thus held that those lecturers who were appointed on contractual basis had not entered services through the backdoor. Their appointments having been made on regular and full time posts, it was not permissible for the State Government to adopt the hire and fire policy. On that premise this Court directed that the services of those lecturers to be regularised but without any monetary benefits. It is undisputed that this judgment of the

Division Bench in Sachin Ambadas Dawale and others (supra) was challenged before the Hon'ble Supreme Court which dismissed the Special Leave Petition in limine on 06.01.2015.

14. The contentions as urged before the Division Bench in Sachin Ambadas Dawale and others (supra) have been reiterated in the present proceedings. It is emphasised that the Lecturers herein are similarly situated inasmuch as they had been appointed on contractual basis pursuant to the Government Resolution dated 25.07.2002. The MPSC for a considerable period of time of almost ten years from the issuance of advertisement dated 15.09.2003 had not undertaken any selection process. The Lecturers were appointed after being duly selected by a Selection Committee as constituted, the service benefits in the form of leave, etc. were made available and the amount of honourarium was also increased with passage of time. It is thus urged that the Lecturers herein being similarly situated and the decision in Sachin Ambadas Dawale and others (supra) having attained finality ought to be followed.

On behalf of the State Government it was strenuously urged that the said decision was rendered in the peculiar facts of that case and the ratio thereof could not be made applicable to the case in hand. Reference was made to the order passed in Civil Application (W) No. 828 of 2017 in Writ Petition No.2046 of 2010 dated 27.04.2017. In that order Division Bench that decided Sachin Ambadas Dawale and others (supra) observed that in the light of the fact that the petitioners therein were appointed pursuant to Government Resolution dated 25.07.2002 after issuance an advertisement and being interviewed by a duly constituted Selection Committee, the entry of those petitioners in service could not be said to be a backdoor entry. It was stated that the relief was granted only to those petitioners who were in service when they had approached the Court and the said judgment would not be applicable to those persons who had left their job. It was clarified that the decision in Sachin Ambadas Dawale and others (supra) did not lay the ratio that persons who were appointed on clearly contractual or temporary basis without following the due selection process as laid down by the Hon'ble Supreme Court in the case of Umadevi (supra) would also be entitled to be regularised of their services.

15. We may notice some distinguishing factors that could be deduced from the decision in Sachin Ambadas Dawale (supra) and the facts of the present case. After the Lecturers herein had participated in the selection process pursuant to the advertisement wherein it was stated that the posts in question were to be filled in on temporary basis by contractual mode, the Directorate of Arts, Maharashtra State, issued an Office Order dated 31.10.2003 in which it was stated that the appointments were being made for a period of eleven months on monthly honourarium of Rs.8,000/- from 10.11.2003. The candidates were required to sign a bond on stamp paper of Rs.20/-. It was also stated that if the post in question was declared excess after such contractual appointment, the services would automatically come to an end. It is an admitted fact that each

Lecturer executed the requisite bond incorporating terms and conditions that were mentioned in the Circular dated 31.10.2003. In Anita and another (supra) Legal Advisors, Law Officers and Law Instructors were appointed on contractual basis. On an advertisement being issued seeking to make regular recruitment, the same was challenged by such contractual appointees before the Tribunal. The Tribunal did not grant the relief of regularisation as prayed for. The appointees approached the High Court which held that since 471 posts were created by the State Government which were permanent in nature, the appointments thereon were also permanent. The relief of permanency/regularisation was not granted. Both the parties then approached the Hon'ble Supreme Court. It was noticed that the intention of the State Government to fill in the said posts on contractual basis was clear from the government resolutions under which the appointments were made. It also noticed that the appointees had signed an agreement acknowledging the contractual nature of appointment. In that backdrop, it was observed by the Hon'ble Supreme Court that the conditions of the engagement of the said appointees was governed by the terms of the agreement. Having accepted such contractual appointment, the appointees were estopped from challenging the contractual nature of appointment. On that premise the judgment of the High Court was set aside. The aforesaid decision thus indicates that a contractual appointee having executed an agreement acknowledging the nature of appointment, it was not permissible for him to contend otherwise and claim a larger relief. It cannot be seen from the decision in Sachin Ambadas Dawale and others (supra) that the petitioners therein had executed such bonds and had acknowledged the nature of their contractual engagement. This relevant distinguishing aspect would have to be kept in mind.

16. Another distinguishing feature to be noted is that in Sachin Ambadas Dawale and others (supra) the petitioners were lecturers in different Departments of Government Polytechnic Colleges. On 29.03.2008 the State Government had informed the Directorate of Education (Higher Education) that teaching posts which fall within the purview of the MPSC and which were to be filled in on the basis of interviews had been taken out of the purview of the MPSC and that the State Cabinet had granted approval to the same. It was on that premise that it was argued that the State as a model employer could not discriminate between similarly situated employees. This crucial fact of the post in question having been removed from the purview of the MPSC is absent in the present case. Recruitment Rules in the present case have not been shown to have been amended so as to dispense with the requirement of the process of selection being undertaken by the MPSC. In fact, in the present case, issuance of advertisement by the MPSC during the pendency of the proceedings before the Tribunal was subjected to challenge by amending the Original Applications. Recruitment process initiated by the MPSC was specifically challenged. This aspect cannot be ignored.

17. At this stage, it is necessary to refer to the decision in Mahesh Madhukar Wagh and others (supra). There too Assistant Professors appointed in the year

2012-13 on year to year basis had sought a declaration of being permanent teachers. Reliance was placed on behalf of the said Assistant Professors on the decision in Sachin Ambadas Dawale and others (supra), Shri B.R.Gavai, J. (as His Lordship then was) authoring the judgment for the Division Bench has observed in paragraphs 15 and 16 as under:

"15. In the present case, advertisement clearly states that the applications are invited for the posts which are purely temporary posts and also specifying the period therein. They also specify that, in the event, regularly selected candidates are available through the mode of Section 76, the appointments of the temporary candidates would be liable to be terminated, so also there is a specific stipulation in the appointment orders to that effect. We therefore find that if the stand, as taken by the Petitioners, is accepted, then we would be endorsing an argument which runs contrary to the mandate of Articles 14 and 16. The advertisement clearly states that the appointments would be only for a specific period. Had it been made known to the candidates that the appointments, that would be made for temporary period, in normal course, would be continued in eternity, many otherwise eligible candidates who have not applied, could have very well applied for the said posts. We are therefore of the considered view that if the arguments, as are advanced by the Petitioners, are to be accepted, we will have to hold contrary to the principle of law laid down by the Hon'ble Apex Court in the case of Umadevi (supra).

16. In ordinary course, we would not have given such an elaborate reasoning. However, it has been noticed that decision of Division Bench of this Court in the case of Sachin Ambadas Dawale (supra), to which one of us (Gavai, J.) is a party, is being widely misquoted. Since we got an opportunity to explain as to in what circumstances the Judgment in the case of Sachin Ambadas Dawale (supra) was rendered, we thought it fit to give our elaborate reasons explaining as to under what circumstances Sachin Ambadas Dawale (supra) was rendered and why the present Petition is liable to be dismissed.

18. The aforesaid decision in Sachin Ambadas Dawale and others (supra) was also sought to be relied upon by the petitioners in Rajesh A. Bharte (supra). Distinguishing the aforesaid decision it was observed that the petitioners therein were appointed on purely contractual basis for a limited tenure of one year which tenure was renewed from time to time on contractual basis. Their services were sought to be terminated to make way for a regularly selected candidate and hence it was not the case of substitution of one contractual employee by another.

Again in Hareshbhai Mohanbhai Patel and others (supra) the decision in Sachin Ambadas Dawale and others (supra) was sought to be relied upon. Therein, the prayer for grant of regularisation of service of post graduate teachers and trained graduate teachers was denied by the Central Administrative Tribunal on the premise that grant of relief of regularisation to the said petitioners who were appointed on the basis of an advertisement which had clearly stated that the appointments would be only on daily rated basis or that the appointees would

not claim for regularisation would render the specific condition advertised under which the selection had taken place to be not applicable. While distinguishing the aforesaid judgment, the Division Bench in paragraph 45 observed as under :

" 45. In fact, the Division Bench, which decided Sachin Ambadas Dawale (supra) in Civil Application (W) No.828 of 2017 in Writ Petition No.2046 of 2010 (D) Anil Laxman Telang and ors. vs. Principal Secretary, State of Maharashtra, Department of Higher and Technical Education, Mumbai and ors. has by its order dated 27th April, 2017, clarified its decision and made it clear that the observations in Sachin Ambadas Dawale (supra), were in the peculiar facts and circumstances in the said matter. The relevant extracts of the order dated 27th April, 2017 read as follows:

It could further be seen that, in the said case, we were considering the case of the petitioners in the peculiar facts and circumstances as appearing in the said case. We had considered in the said case that the appointments of the petitioners therein were made in pursuance to the Government Resolution dt. 25-7-2002 which specifically provided for the entire selection process including the advertisement, conducting of interviews by the duly selected Selection Committee consisting of :

1. Joint Director, Technical Education Divisional Office – Chairman.
2. Lady representative – Member.
3. Principal of concerned Institute – Member Secretary.
4. Representative of backward classes (Engineering Graduate) – Member.
5. Subject Experts (2) – Member.

In these peculiar facts and circumstances, we had observed that the appointment of petitioners could not be said to be a backdoor entry and as such, we had distinguished the Judgment of the Apex Court in the case of Secretary, State of Karnataka and ors. vs. Umadevi and others, reported in AIR 2006 SC 1806(1). We had also considered that the State Government itself in the category of various other employees had regularised the services of various employees. We had further observed that, for a long period during which the petitioners were in employment, the Maharashtra Public Service Commission had also not conducted the interviews and as such, during the intervening period when the petitioners were continued in the employment, after having undergone due selection process, they had attained upper age limit and as such when the State itself had not conducted the selection process through MPSC for more than 10 years, the petitioners who were selected through due selection process could not be penalised. We had observed that, on account of inaction on the part of the State, selection process for a period of more than 10 years was not held and hence, the petitioners, who had by efflux of time, become age barred, cannot be penalised and thrown out of their job. We had specifically observed that, insofar as the case of Umadevi is concerned, the appointments therein were made

clandestinely and without advertisement and the persons were appointed without following the due process of law.

It could thus be seen that, in the peculiar facts and circumstances of the case, the petitioners in the present petition were selected in pursuance of the Government Resolution dt. 25-7-2002 after following the due selection process by the Selection Committee duly constituted under the said Government Resolution and on account of inaction on the part of the State Government in not holding the selection process through the MPSC for a period of more than 10 years, many of the petitioners had become age barred and as such, they were deprived of opportunity of undergoing selection process through MPSC, we had found that a special case was made out for regularization of services of the petitioners therein. We may specify that we had restricted the claim of the petitioners who were already in service when they had approached the Court. By no stretch of imagination, the said Judgment could be applicable to the persons who had already left the job and taken chances.

We may also observe that, citing the said Judgment, some of the employees who are appointed on temporary or contractual basis and who are removed after putting in a year's or two years service are also seeking regularisation. We may clarify that the said Judgment would not lay the ratio that, the persons who are appointed on purely contractual or temporary basis without following the due selection process as laid down by the Apex Court in the case of Umadevi, would also be entitled to regularization of their services."

19. In a recent decision in *Lalita V. Mertia* (supra), the Division Bench considered the challenge to the judgment of the Central Administrative Tribunal by which the relief of regularisation on a sanctioned vacant post of Examiner of Trademark was granted. Therein the initial entry was on contractual basis on a temporary post. The order passed by the Tribunal sought to be supported on the premise that the appointee was not appointed on a post that was unsanctioned and that the appointee had gone through the regular selection process. Reliance was also placed on the decision in *Sachin Ambadas Dawale and others* (supra). In paragraph 27 of the decision in *Lalita V. Mertia* (supra), the Division Bench has observed as under :

"27. . The second ground is this. Smt. Lalita contended with success before the Tribunal that since the post on which she came to be appointed was a sanctioned post and she had faced a process of selection prior to her engagement on contract, her entry in service can by no stretch of imagination be called a back-door entry. Admittedly, she was not required to face the selection process of the UPSC since she was being considered for a contractual post and engagement on such contractual posts was beyond the scope of the RR of 2000. Smt. Lalita may not have sneaked in through the back-door; in fact, we would go to this extent of holding that she did enter service in the office of the CGPDTM through the front-door, to the notice of all and sundry, with such door being completely ajar but for a contractual post (a plan-post) and not for appointment on any of the non-plan

posts. What was required for appointment on a plan-post may have been complied with but we cannot accept that the process in which Smt. Lalita participated could be a real substitute for the process conducted by the UPSC for filling up non-plan posts. Not much can, thus, be gained by her with reference to the selection process in which she participated because of the simple reason that the post was different which necessitated a different selection process. The Tribunal, in our opinion, missed the trees for the woods."

The observations as made in Mahesh Madhukar Wagh and others (supra) which have been referred to hereinabove were also noticed by the Division Bench and it was observed that the decision in Sachin Ambadas Dawale and others (supra) was a decision which turned on its own facts. While setting aside the order passed by the Central Administrative Tribunal, liberty was granted to the candidates to participate in the recruitment process that would be held in future and it was observed that if the candidate satisfied the eligibility criteria, she could be considered for recruitment by condoning her age bar.

20. The principle of stare decisis also requires consideration. The decision in Sachin Ambadas Dawale and others (supra) was required to be clarified by the same Division Bench in its order dated 27.04.2017 passed in Civil Application (W) No.828 of 2017 in Writ Petition No.2086 of 2010. This was after noticing the fact that by relying upon that decision the relief of regularisation was being sought by urging that the claimants though appointed temporarily and for stipulated period had discharged services for a long period of time. Thereafter in Mahesh Madhukar Wagh and others (supra) the circumstances in which the judgment in Sachin Ambadas Dawale and others (supra) was rendered and the relief was granted was explained. In the decisions delivered after Sachin Ambadas Dawale and others (supra), various Division Benches have found that the said judgment was rendered in the peculiar facts of that case and the ratio thereof could not be straightway made applicable in proceedings where the relief of regularisation was sought on the premise that temporary and contractual appointees had rendering services continued for a considerable period of time. Reference in that regard can be made to the decisions in Rajesh A. Bharte, Hareshbhai Mohanbhai Patel, Mahesh Madhukar Wagh and others and Lalita V. Mertia (supra) to name a few. It may also be stated that after these writ petitions were heard and closed for passing judgment, the learned Assistant Government Pleader with due notice to the counsel for the Lecturers placed on record a recent decision of the Aurangabad Bench in Writ Petition No.4546 of 2016 (Ganesh D. Jambhrunkar and others Vs. State of Maharashtra and others) with connected writ petitions decided on 20.09.2022. Therein, Assistant Professors, Associate Professors and Professors were appointed on contractual basis on consolidated salary pursuant to advertisement issued in the year 2011. The Interviewing Committees consisted of subject experts and the petitioners claimed that they were duly selected. Contractual appointments were made for a period of eleven months and at the end of each contract period, they were subjected to a fresh interview and again selected. It was urged that since the

petitioners fulfilled the requisite qualifications and were appointed through proper selection and had worked for substantially long period, they were entitled to regularisation of their services. Reliance was placed on the decision in Sachin Ambadas Dawale and others (supra). The Division Bench in paragraph 28 of the said decision observed as under:

28. Thus, this Court has specifically clarified that the judgment in Sachin Ambadas Dawale (supra) does not lay down a ratio that persons appointed on purely contractual or temporary basis without following due selection process as laid down by the Apex Court in the case of Umadevi would also be entitled to regularization of their services. The present petitions have been filed on 18.04.2016 before issuance of the clarification by this Court on 27.04.2017. Thus, in view of the specific clarification issued by this Court by order dated 27.04.2017, the petitioners are not entitled to the relief of regularization by relying on the judgment in the case of Sachin Ambadas Dawale (supra).

It was further noted that the appointments of the said petitioners were not against the sanctioned posts. The relief of regularisation was thus refused. The learned Senior Advocate for the Lecturers sought to distinguish this decision by stating that the petitioners therein had discharged duties only for a period ranging from three to five years while the Lecturers herein had rendered services for more than ten years.

As per principle of stare decisis the Court stands by the decisions and usually does not disturb what is settled. "Where similar points arise frequently in litigations, it is prudent to keep the scale of justice even and steady and not liable to waiver with every new Judge's opinion" – Advanced Law Lexicon, 3rd Edition, 2005. Thus, when the very same Division Bench that rendered the decision in Sachin Ambadas Dawale and others (supra) has clarified its decision and that decision has been further explained in subsequent decisions with observations that the same was rendered in the peculiar facts of the case, in our view that consistency must be maintained and the ratio of the decision in Sachin Ambadas Dawale and others (supra) as clarified and explained would have to be held confined to the peculiar facts of that case. We are also in agreement with what has been stated by the subsequent Division Bench of this Court in Lalita V. Mertia (supra) that the exception made in the case of Umadevi (supra) was a onetime exception and was applicable only to those employees who had completed ten years service as on 10.04.2006.

21. In A. Umarani (supra) it has been held that regularisation is not and cannot be the mode of recruitment by any 'State' within the meaning of Article 12 of the Constitution of India or any Body or Authority governed by the statutory Act or the Rules framed thereunder. In B.N.Nagarajan and others (supra) it was held that the words "regular" or "regularisation" do not connote permanence. This position has been clarified by the Constitution Bench in Umadevi (3) and others (supra). In paragraphs 47, 52 and 53 it has been observed as under:

"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 recognized 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 concerned cases, 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."

"52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College* [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* (supra), *R.N. Nanjundappa* (supra), and *B.N. Nagarajan* (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that

require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

It has been held in clear terms that the onetime measure to regularize the services of irregularly appointed employees who had worked for ten years or more ought to be considered for regularisation by taking necessary steps and completed the process within a period of six months from the date of the judgment which was 10.04.2006.

The Constitution Bench further observed that a person accepting the engagement which is either temporary or casual in nature does so with open eyes and it is not that he is not aware of the nature of his employment. Though it was true that he would not be in a position to bargain since he would have been searching for some employment and had accepted whatever he got, on that ground it would not be permissible to take a view that the person who has been temporarily or casually appointed should be directed to be continued permanently in service. This would result in creation of another mode of public appointment which was not permissible. The learned Senior Advocate for the Lecturers relied upon the decisions in Central Inland Water Transport Corporation Ltd., Delhi Transport Corporation and Maharashtra State Road Transport Corporation & another and Jagjit Singh and others (supra), but we find that in the present case the observations in paragraph 45 to 47 of the decision in Umadevi (3) and others (supra) would be required to be followed.

22. It was also urged on behalf of the Lecturers that insofar as the requisite qualifications were concerned, they had the same as required by the AICTE. Similarly, the service conditions of such Lecturers were governed by the University Grants Commission Regulations. The Lecturers on that premise were entitled to seek regularisation of their services. Similarly, it was urged that they were entitled for pay-scales that were admissible to the Lecturers duly selected through the MPSC. We however find that these factors would not entitle the Lecturers to overcome the fact that their appointments were made on contractual basis after executing bonds with such clear understanding. As observed in Anita and another (supra) when an appointment is made on contractual basis, the conditions of such engagement would be governed by the terms of the agreement.

It is pertinent to note that the Lecturers have not challenged the terms on which they were appointed including the advertisements and the fact that they were required to execute bonds in that regard. Having accepted such appointments, the Lecturers cannot be permitted to disregard the terms and conditions mentioned therein.

It is true that for a considerable period of time the posts of Lecturers were not filled in through the MPSC. The State as a model employer, it was urged, could not act contrary to the Government Resolution dated 25.08.2005 by which all departments under the State Government were directed to take immediate steps to fill in vacancies by making regular appointments and not making the appointments on temporary or ad hoc basis. It is also true that after issuance of the aforesaid Government Resolution the State has engaged Lecturers on contractual basis. This act by itself however would not come to the aid of the Lecturers herein in support of their prayer for grant of regularisation. As observed in *Lalita V. Mertia* (supra) granting relief of regularisation in such facts would amount to a fraud on public inasmuch as steps contrary to the advertisement/representation made to the public by inviting applications for appointment on contractual basis would be given go-by. In paragraph 28 It has been observed as under :

"28. There is a third ground for interference; and, that is referable to Mr. Marne's contention that Smt. Lalita was appointed on a sanctioned post albeit on contract. The advertisement to which Smt. Lalita responded was a clear representation to the public that applications were being invited from eligible candidates to fill up contractual posts. No promise was held out that those selected and appointed on contract would ultimately be considered for substantive appointment by dint of their performance or tenure in the office of the CGPDTM. There could be candidates having equal or better qualifications than Smt. Lalita but who may have decided against offering their candidature noticing that the Controller proposed to make appointments on contract only for a short period and that there was no rule which permitted contractual appointees to be granted permanence in service. If indeed, Smt. Lalita's service is to be regularized on the grounds urged by her, which were neither part of the recruitment rules nor the advertisement, the aggrieved would be all those who had equal or even better qualifications than Smt. Lalita but might not have applied for the post because, firstly, they were not interested in any short time appointment on contract, which has no security of service, and secondly, there was no promise held out that the contractual appointees could subsequently stake a claim for regularization based on continuous contractual service. If regularization as claimed by Smt. Lalita is allowed, that would amount to a fraud on public, running counter to the advertisement itself being a representation to the public inviting applications for appointment on contract and no Court, far less this Court, should be a party to it".

In that view of the matter this contention raised on behalf of the Lecturers cannot be accepted.

23. The Tribunal in the impugned judgment has proceeded to apply the ratio of the decision in *Sachin Ambadas Dawale and others* (supra) without noticing various distinguishing features that have been referred to hereinabove. The decisions to which we have referred distinguish the view as taken in *Sachin*

Ambadas Dawale and others (supra) but these decisions have not been considered by the Tribunal. The Tribunal proceeded merely on the basis that the appointments were made in view of Government Resolution dated 25.07.2002 coupled with the fact that the contractual appointees continued for a period of about ten years. As held by the Hon'ble Supreme Court and this Court, these aspects would not be sufficient to grant the relief of regularisation.

24. Yet another development having considerable material bearing on the proceedings in hand is that on 08.07.2020 the Higher and Technical Education Department of the State of Maharashtra has issued a Government Resolution by which about 135 posts of Lecturers in Institutions under the control of Directorate of Arts namely; Sir J.J.Arts College, Mumbai, Government Arts and Design College, Nagpur and Government Arts and Design College, Aurangabad have been abolished. It has been stated that on the said 135 posts there were 27 regularly appointed Lecturers, on 26 posts contractual Lecturers were working while on 11 posts temporary and periodical Lecturers were working. The contractual as well as temporary lecturers were working in view of Court orders. As and when the said posts would become vacant, the same were to be filled in as per the eligibility and norms prescribed by the All India Council of Technical Education (AICTE). In the affidavit filed by the Dean, Government Arts and Design College, Nagpur dated 02.08.2022 it has been stated that the Lecturers herein had been continued only account of the protection extended to them by the Tribunal and that no sanctioned posts were available on which the said contractual Lecturers were discharging duties. In paragraphs 1 and 2 of the said affidavit it has been stated as under :

"1..... I say that as per the decision taken vide aforesaid Government Resolution dated 08.07.2020 all the 135 posts in the teaching cadre under the Directorate of Art have been abolished. However, incumbents who were duly selected as per Recruitment Rules of 1980, 1982 and 1983 will be continued till their attaining the age of superannuation. I say and submit that since as per the Government Resolution dated 08.07.2020 the erstwhile cadre of teaching came to be abolished hence the post held only by duly selected incumbents as per Recruitment Rules of 1980, 1982 and 1983 will survive, and rest of the post out of 135 has already been abolished vide the Government Resolution mentioned herein.

2. I say and submit that, the petitioners vide the same Government Resolution dated 08.07.2020 has created 159 new posts in teaching cadre. These 159 posts will be filled in as per Recruitment Rules which are drafted in consonance with the AICTE norms have been submitted to the Maharashtra Public Service Commission for approval. After getting approval of Maharashtra Public Service Commission, the said Recruitment Rules will be submitted for the approval of the Government and the Hon'ble Governor. Thereafter the Recruitment Rules will be published in the form of notification. After publication of notification of Recruitment Rules as above, requisition letter will be sent to Maharashtra Public

Service Commission for filling up 159 newly created teaching posts.”

There is no challenge raised to this Government Resolution dated 08.07.2020 in the present proceedings.

25. Another decision on which the Tribunal has relied in the impugned judgment is Arjun Singh and others (supra). The facts therein indicate that the appointments were made pursuant to the names of the appointees being recommended by the Himachal Pradesh Public Service Commission. It was found that the names of the appointees were then forwarded to the Chief Medical Officer for constituting a Medical Board to conduct a medical examination. Though the appointments were made on contractual basis, it was held that the said appointees were entitled for regular appointment. It is clear from the facts of the aforesaid decision that the Public Service Commission was involved in the selection process.

That aspect is missing in the present case which the Tribunal failed to notice.

26. Hence for aforesaid reasons we find that the Tribunal was not justified in law in granting the relief of regularisation to the Lecturers. There are various distinguishing factors in the present case which would not make it permissible for this Court to adopt the course that was followed in Sachin Ambadas Dawale and others (supra). It is true that the Lecturers have rendered services for a period of about ten years but their engagement being on contractual basis and governed by the bonds executed by them, such contractual appointments cannot be permitted to be regularised. Moreover, in the light of the subsequent Government Resolution dated 08.07.2020 no relief can be granted to the Lecturers on posts that have now been abolished. The Lecturers with the passage of time are likely to have crossed the age limit that would preclude them from participating in any fresh recruitment process. Hence in this regard, we would adopt the course followed by the Division Bench in Lalita V. Mertia (supra) by granting liberty to the Lecturers to participate in any future process of recruitment on the post of Lecturer on substantive basis by directing that if the eligibility criteria is satisfied, they could be considered for recruitment by condoning the bar of age, if any.

27. Thus as a result, the judgment of the Maharashtra Administrative Tribunal dated 04.09.2019 in Original Application (OA) No. 165/2015 with connected Original Applications is set aside. Writ Petition Nos. 1609/2020, 1592/2020, 2371/2020, 2372/2020, 2373/2020 and 2374/2020 filed by the State are allowed and Writ Petition Nos. 2411/2021, 2412/2021, 2413/2021, 2414/2021 and 2415/2021 filed by the Lecturers stand dismissed. Rule accordingly. The parties shall bear their own costs.

This judgment shall come into effect after expiry of period of eight weeks from today.