

(1993) 02 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 1181 to 1191 of 1992

Syed Younus Ali

APPELLANT

Vs

Principal, Kendriya Vidyalaya

RESPONDENT

Date of Decision : 18-02-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority Etc) Rules, 1971 — Rule 41, 9

Citation : (1993) ILR (Kar) 1252 : (1993) 1 KarLJ 639

Hon'ble Judges : Hanumanthappa, J

Bench : Single Bench

**Advocate : Promod Khatavi and Harikrishna S. Holla, for the Appellant;
Mukunda Menon, Central Govt. Stdg. Counsel, for the Respondent**

Final Decision : Allowed

Judgement

Hanumanthappa, J.—In these Writ Petitions the petitioners at the time of filing the Writ Petitions were working as Trained Graduate Teachers, Post Graduate Teachers and Primary Teachers in the 1st respondent's institutions which are run by the Central Board of School Education an autonomous body controlled by the Union of India. They sought for the following reliefs:

"Wherefore the petitioners pray that this Hon"ble Court may be pleased to:

(i) issue a writ in the nature of Mandamus of any other appropriate writ or direction directing the respondents to regularise the services of petitioners from the date of their initial appointments, with all consequential benefits;

(ii) direct the respondents to pay salary and allowances on par with teachers appointed on regular basis from the date of their initial appointments so long they continue their service;

(iii) grant such other further reliefs as may be deemed fit in the circumstances of the case."

The case of the petitioners is that their names were registered in the local Employment Exchanges. Pursuant to the request made by the 1st respondent, their names were sponsored by the Employment Exchange, Bangalore, for selection to the posts of Trained Graduate Teachers, Post Graduate Teachers and Primary School Teachers in the 1st respondent/Institutions. Their appointments" were duly approved by the 2nd respondent.

2. The petitioners in W.Ps. Nos. 1181, 1182 and 1183 of 1992 were appointed on adhoc basis with effect from 19-7-1990. On completion of 179 days, their services were terminated on 11-1-1991. On 15-1-1991 they were again appointed on part-time basis on a consolidated salary of Rs.900/- per month. Their services were terminated on 30-4-1991. On the re-opening"of the school in the month of July, 1991, they were again appointed on part-time basis with effect from 22-7-1991. They were relieved with effect from 19-9-1991. The 1st respondent again appointed them on adhoc basis on 21-9-1991. Since then they have been continuing in service without any break.

The petitioner in W.P.No. 1184 of 1992 was appointed on adhoc basis with effect from 4-1-1990. Her services were terminated on 30-4-1991. On the re-opening of the school, again she was appointed on adhoc basis with effect from 23-8-1991.

4. The petitioner in W.P.No. 185 of 1992 was appointed on part-time basis with effect from 15-1-1991 on a consolidated salary of Rs.900/- per month. She was terminated from service on 30-4-1991. On the re-opening of the school, she was again appointed on part-time basis on 22-7-1991. Again her services came to be terminated on 19-9-1991. Subsequently she was re-appointed on adhoc basis in the pay scale of Rs. 1400-2600 with effect from 21-9-1991.

5. The petitioners in W.Ps. Nos. 1186 to 1191 of 1992 have been appointed on adhoc basis with effect from 3-9-1991, 9-9-1991, 11-8-1991, 4-12-1991, 30-11-1991 and 20-7-1991 respectively.

6. At the time of the initial appointments of the petitioners, they had the requisite qualifications. At the time of filing these Writ Petitions, the petitioners were drawing a gross salary of Rs.2,430/-per month in the pay scale of Rs. 1400-2600. The appointments of the petitioners were made against substantive posts. The petitioners were discharging the duties what a teacher regularly appointed was expected to do. In spite of the petitioners serving as Teachers continuously, the respondents treated them as ad hoc teachers and terminated their services at the end of every 170 days even though there were regular vacancies. When the petitioners were appointed against substantive posts and allowed them to discharge their duties for more than 170 days, the respondents" action in terminating them as and when they liked is quite discriminatory and arbitrary and thus violative of Articles 14 and 16 of the Constitution of India. Treating the petitioners as ad hoc teachers was to deprive them their continuous service. In view of the law laid down by this Court in a number of cases,

appointment of teachers on ad hoc basis should not have been dispensed with and wherever there were vacancies the teachers appointed on temporary basis should have been regularised as soon as possible. Further, the policy adopted by the respondents paying the petitioners a consolidated salary of Rs.900/- or a little more, when the petitioners were discharging the duties of regular teachers, was not only illegal but also opposed to the legal maxim "Equal Pay for Equal Work.

7. Sri Khatavi submitted that when petitioners were appointed either temporarily or on ad hoc basis against the existing vacancies and continued for a considerable period though with a little break deserved to be regularised as respondents had not shown as to when exactly selection to these posts were made by proper recruitment and when teachers went on leave against those vacancies petitioners came to be appointed. In support of his contentions, Sri Khatavi, learned Counsel for the petitioners, placed reliance on the following Decisions:

- i) All Manipur Regular Posts Vacancies Substitute Teachers" Association Vs. State of Manipur,
- ii) Bhagwan Dass and Others Vs. State of Haryana and Others,
- iii) Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others,
- iv) State of Haryana and others Vs. Piara Singh and others etc. etc.,

8. Sri Khatavi submitted that if for any reason the Court comes to the conclusion that to give a direction to respondents to regularise the services of petitioners is not possible, at least their case may be considered by the respondents for fresh appointment as and when vacancies arise either in Karnataka or elsewhere. He further submitted that it is not disputed that the petitioners have requisite qualification for the appointment of posts which they held all these days and petitioners have crossed the age limit. While making such recruitment, weightage as to age shall be given to the petitioners. If still vacancies are there, since respondents utilised the services of the petitioners as teachers, their case may be considered for such adhoc or temporary appointments till regular recruitment is taken place.

9. The respondents filed their Statement of Objections denying the claim of the petitioners. It is contended therein that the Writ Petitions are not maintainable as the petitioners have not established their locus standi to compel the respondents to regularise the services of the petitioners, According to the respondents, the 1st respondent appointed the petitioners purely on adhoc basis or part-time basis. At the time of appointments, the petitioners agreed to the terms and conditions of appointment and accepted the appointments. As such, the petitioners cannot contend that the respondents committed any illegality in refusing to regularise the services of the petitioners and in refusing to pay them necessary salary, etc. In the absence of any legal claim, the petitioners cannot

seek for regularisation of their services. The appointment of Teachers was done by the 2nd respondent on All India Basis as and when vacancies arise. Whenever Select List of the candidates was exhausted or the Teachers who were selected and posted to a particular institution not reported for duty or they proceeded on leave for a longer period or resigned from service, the Principal of the Kendriya Vidyalaya in order to see that the education of the students was not impaired for want of teachers was authorised to appoint Teachers purely on temporary or ad hoc basis from those candidates sponsored by the Employment Exchange or from those who responded to the Notification issued to that effect. Thus, the stop-gap arrangement was being made only with a view to see that the regular work of the Kendriya Vidyalaya was not dislocated or the academic session was not disrupted. As per recruitment rules such temporary or ad hoc appointments will be resorted to by the Principal with prior approval of the Chairperson of the Vidyalaya Management Committee of the concerned Vidyalaya. The appointments so made on ad hoc basis for 179 days or upto 30th April or upto the regular incumbent join duty will be approved by the Assistant Commissioner on the recommendation of the Vidyalaya Appointment Committee. Thus, the appointments of the petitioners were made not against substantive posts. At the time of appointments, it was made clear to the petitioners that their services would be dispensed with after the completion of 179 days or when the regular incumbents join duty. Since the appointments were purely on adhoc basis and not against any substantive post, if the petitioners had no desire to accept such adhoc or temporary appointments, they should have refused at the initial stage itself. Having accepted the appointments knowing fully well the terms and conditions of the appointments, it is not open for the petitioners to say now that the respondents have resorted to discriminatory attitude and their action is in violation of Articles 14 and 16 of the Constitution of India. Further case of the respondents is that the appointments of Teachers at Kendriya Vidyalaya on permanent basis shall be strictly in conformity with the Kendriya Vidyalaya Sangathan (Appointment, Promotion, Seniority, etc.) Rules, 1971 (hereinafter referred to as the Rules). The relevant provisions of the Rules, viz., Rules 9 and 41, are extracted hereunder: "9. Ad-hoc Appointment (i) Notwithstanding anything contained in Rules 6 and 7 when an employee included in the select panel is not available or where such a select panel has not yet been prepared and the appointing authority considers it necessary and expedient to do so, a vacancy in any grade of the service may be filled on ad-hoc and temporary basis by the appointment of a person or persons otherwise eligible for appointment thereto; (ii) for a period not exceeding six months; or (iii) for the period for which a select panel in respect of the particular post/grade is not prepared as per rule 7, whichever is less; (2) Every appointment under sub-rule (1) shall be made only as a temporary arrangement and no such appointment shall be deemed to confer on the appointee any right or claim to the respective grade/post or to seniority in that grade." Rule 41 of the Rules reads as follows: "41. Filling up of Leave Vacancies Leave vacancies in the teaching staff sometimes arise at an awkward time thereby creating a serious handicap in the instruction

of children. For filling up these temporary vacancies it is necessary to take immediate steps in advance. The following guidelines are laid down in this matter: (a) If the vacancy occurs at a time of the year when the school work can be carried on without serious handicap or dislocation, the vacancy may not be filled up at all. There is no objection to a trained graduate teacher teaching the higher classes in such a situation or a primary teacher teaching the middle or higher classes. The post-graduate teachers and trained graduate teachers also are always welcome to teach in the lower classes. (b) If the vacancy is of more than a month's duration and occurs at a time when the teaching work cannot be managed without filling up the vacancy, the Principal should make necessary arrangement of a purely temporary and time-bound nature. This may be by appointing some qualified candidate on the waiting list in the same grade or in the lower grade. No commitment for permanent absorption should be made in respect of such arrangements and the duration of appointment should be clearly specified. This period can be extended later if the teacher concerned extends his leave. In case there is no qualified candidate on the waiting list in the same grade or lower grade, the vacancy may be filled up through the Employment Exchange. (c) In the situation mentioned under (b), if a whole-time teacher is not available, the Principal may take some part-time arrangement on such payment as may be, by and large, reasonable, after obtaining the approval of the Chairman, Vidyalaya Management Committee. (d) Arrangements made under (b) or (c) should be reported simultaneously to the Assistant Commissioner concerned. (e) 15% and 7 1/2% of posts shall be reserved for the Scheduled Caste and Scheduled Tribe candidates respectively and 3% for the physically handicapped person. Out of this 1% posts are reserved for the blind and 2% for such orthopaedically handicapped person as are able to write on the black-board and speak clearly and audibly in respect of Group "C" and "D" posts. Sri Mukunda Menon, learned Counsel for respondents in addition to earlier submissions, added that there cannot be any regularization in case of those who were appointed on ad hoc or temporary basis. Moreover, Central Government has not taken any policy decision or it has not issued Government Order to regularise the services of those who worked either against the leave vacancies or against posts selected but not reported for duty though selected. Apart from this, Sri Menon submitted that even Recruitment Rules of Navodaya Central Schools do not speak of regularisation of ad hoc or temporarily appointed persons. It speaks of filling up of vacancies only by way of recruitment. As Rules do not permit the regularisation of teachers who were appointed on ad hoc or temporary basis, question of regularisation does not arise. In support of the contentions raised in the Statement of Objections Sri Mukunda Menon, learned Central Government Standing Counsel for the respondents, placed reliance on the Decisions of the Supreme Court in (1) Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, wherein it has been held that the persons employed under the Jawaharlal Nehru Rozgar Yojna Scheme cannot claim regularisation merely because they have put in more than 240 days of service; (2) DIRECTOR, INSTITUTE OF MANAGEMENT DEVELOPMENT, UTTAR PRADESH v.

SMT. PUSHPA SRIVATSAVA AIR 1992 SCW 2436 wherein it is held that where appointments were made temporarily or on ad hoc basis such employees have no legal right to assert that they are entitled to be regularised.

10. With a view to know who is the appointing authority of the Kendriya Vidyalaya, when did the vacancies of Teachers become vacant, when were the regular appointments made to fill up the vacant posts held by the petitioners, whether the 1st respondent has the power to make recruitment against permanent vacancies, etc. Sri Mukunda Menon, learned Counsel for the respondents was asked to get the necessary particulars. Pursuant to the same, he produced the Rules. But, no information regarding the above particulars were furnished.

11. In order to appreciate the rival contentions of both sides and to know whether the appointments of the petitioners were on temporary or ad hoc basis, whether refusal of their request for regularisation inspite of they serving 179 days is correct or otherwise, whether the petitioners are entitled to seek for a Writ of Mandamus directing the respondents to regularise their services, it is proper to bear in mind some of the principles laid down by this Court and the Supreme Court.

12. It is nobody's case that temporary appointments will not confer any right for regularisation unless the Rules prescribe. The conditions imposed in the appointment orders produced by the petitioners in the Writ Petitions make it clear that the appointments were made on temporary or ad hoc basis and that such appointments are permitted under the Rules. When the offer of appointments was made with a condition that the appointments were for a particular period and when the appointments were accepted by the petitioners and joined duty, it is not open for them to make any grievance at a later stage. However, in the instant case, it is not shown when the selections for the vacancies against which the petitioners were appointed on temporary or ad hoc basis were made. It is also not shown nor any information has been furnished regarding the persons who were selected but did not report for duty and also regarding those who went on leave, even though Sri Mukunda Menon was asked to furnish such information. It is clear from the actions of the respondents in making use of the services of the petitioners for a considerably longer period either on temporary or ad hoc basis that at the time of the initial appointments itself there was a need of permanent Teachers in the institution. It is not the case of the respondents that the appointments were given to the petitioners under any Scheme, such as Rozgar Yojna Scheme, in order to attract the law laid down by the Supreme Court in Delhi Development Horticulture Employees' case wherein it has been clearly stated that the employee appointed for a particular period is not entitled to contend that he shall be continued inspite of non-availability of fund earmarked for the purpose. In the said Decision the Supreme Court also deprecated the unhealthy practice of making direct appointment without getting the list of candidates from the Employment Exchange and

making such direct appointment on various considerations including money. The relevant discussion in the said Decision is extracted below:

"If the resources used for the Jawahar Rozgar Yojna were in their entirety to be used for providing full employment throughout the year, they would have given employment only to a small percentage of the population in need of income, the remaining vast majority being left with no income whatsoever. No fault can, therefore, be found with the limited object of the scheme given the limited resources at the disposal of the State. Those employed under the scheme, therefore, could not ask for more than what the scheme intended to give them. To get an employment under such scheme and to claim on the basis of the said employment, a right to regularisation is to frustrate the scheme itself. No Court can be a party to such exercise. It is wrong to approach the problems of those employed under such schemes with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts, in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources. This is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban unemployed etc. Although there is Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchange for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the Courts are of employment in Government Departments, Public Undertakings or Agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many

of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. The public interest are thus jeopardised in both counts."

In Director, Institute of Management Development's case while dealing with status of employees appointed temporarily or on ad hoc basis held as follows:

"Where the appointment is purely on adhoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such posts can have no right to continue in the post. This is so even if the person is continued from time to time on "ad hoc" basis for more than a year. He cannot claim regularisation in service on the basis that he was appointed on ad hoc basis for more than a year. (The management was directed to consider sympathetically if regularisation in service is possible)"

Further at para 23 the Supreme Court held thus:

"...The appointment was purely ad hoc and on a contractual basis for a limited period. Therefore, by expiry of the period of six months, the right to remain in the post comes to an end."

Again at para 27, Their Lordships while disposing of the case, observed thus:

"Here is one draught from us. In the facts and circumstances of this case, we direct that her services may be continued till the end of this calendar year on the same terms as spelt out in the order dated 1-9-90. Of course, it would be open to the appellant to consider the regularisation of her services, should it so desire. In that event, this judgment will not stand in the way of such regularisation. However, we make it clear that it is not to be understood that we have directed the regularisation."

Sri Menon placing reliance on the above Rules and Decisions submitted that the Decisions rendered by the Supreme Court in the case of State of Haryana and Ors. v. Piara Singh and Ors., as relied upon by Sri Khatavi, on facts has no application. So submitted he requested that the petitions be dismissed.

13. Whereas the case of the petitioners is quite strange and peculiar. Their appointments were not under any Scheme. They were appointed against the existing vacancies. To attract the Rules the respondents have not shown that the petitioners were appointed for a particular period as the selected candidates had not reported themselves for duty or the Teachers appointed permanently have gone on leave. On the other hand, as there was a need of the services of the petitioners, the respondents continued their services from time to time with break of service of a few days. It is needless to say that Respondents 2 and 3, in view of Article 12 of the Constitution, are "State" and Respondent-1 is the Institution. Any action of the respondents is, therefore, susceptible to scrutiny

under Articles 14 and 16 of the Constitution of India. The respondents being a "State" shall always be reasonable, rational, free from bias and in conformity with public policy. While deprecating the Hire and Fire policy of the employer held that all action of the employer shall be fair and in conformity with the public policy and what is public policy has been very well explained in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , wherein it has been held as follows:

"Contract Act does not define the expression "public policy" or "opposed to public policy", or "contrary to public policy" are incapable of precise definition. Public Policy, however, is not the policy of a particular Government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time. As new concept take the place of old, transactions which were once considered against public policy are not being upheld by the Courts and similarly where there has been a well-recognized head of public policy, the Courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the Court must in good and public interest declare such practice to be opposed to public policy. Above all, in deciding any case which may not be covered by authority Courts have before them the beacon light of the Preamble to the Constitution. Lacking precedent, the Court can always be guided by that light and the principles underlying the Fundamental Rights and the Directive Principles enshrined in the Constitution."

In the absence of explaining the time when the vacancies arose and when the vacancies were filled up, when the persons regularly recruited teachers went on leave, the policy adopted by the respondents in making use of the services of the petitioners whose position at the time of seeking appointment was purely on the mercy of the respondents in view of the unemployment of the petitioner in dictating the terms regarding appointment temporary or adhoc basis and subsequently continued for a considerable period and later to say that they are not entitled for regularisation inspite of they possessing requisite qualification, discharging their duties as teachers without any blemish be observed as discriminatory and not in the interest of the institution. Further the approach of the respondents in turning down the requisite of the petitioners runs contrary to the observations made by this Court and other High Courts and the Supreme Court. To cite a few Decisions:

13.1. The High Court of Bombay in VAIDYA BHARATI P. SHAH v. STATE OF MAHARASHTRA AND ORS. 1991 Lab. I.C. 907 pronouncing on the position of part-time employees who were allowed to serve more than 12 years in the Medical College held that such teachers cannot be denied the benefits available

to permanent employees in respect of service conditions such as promotion, basic scale, D.A., etc. applicable to other permanent employees in Science, Commerce and Education. Attempting to terminate their service to get full time employees in view of the earlier decision to that effect and refusal to equal pay for equal work will be violative of Articles 14 , 16 and 311 of the Constitution of India. In the said Decision discrimination shown to the petitioners therein the Court observed thus;

"Under the circumstances, the Government here was not justified in turning down the claims of the petitioners that they should be treated as permanent in their part-time employment with the Government and they should be paid half the salary and dearness allowance of what the full-timers get. The Government in a welfare State cannot afford to say that its part-time employees after 34 years of service could be still termed as "temporary" and be thrown out of job on a specious ground that they were appointed purely on temporary basis. It is not only surprising but also shocking to note that the petitioners who have put in part-time services with the Government from 12 to 34 years are paid as meagre a salary as Rs. 139/- to Rs. 202/- per month. In these days of price rise and rise in the cost of living, in all probability, this amount will not cover even the travelling expenses of the petitioners from their place of residence to the place of work. It is not understandable as to how the Government which had taken a decision that the part-time teachers in other colleges would be eligible for half the salary and dearness allowance on such sum of salary effective from January 1, 1973 now turn round in the month of July, 1990 and say that the petitioners will not be entitled to such benefit on a flimsy ground that the Podal Medical College and Hospital cannot be compared with the Colleges imparting instructions in Arts, Science, Commerce and Education. The attitude of the Government here is, to put it very mildly, most unreasonable, unfair and unjust. It was observed by the Supreme Court in the case of Union of India Vs. M.P. Singh and others, that: "justice alert to differences and sensitive to discrimination. It cannot be measured in terms of money. The Government of a Welfare State has gruelling task of being fair and just and so justice oriented in its approach and outlook"."

13.2 This Court in P.C.MAHESH AND ORS. v. STATE OF KARNATAKA AND ORS. 1991 (1) KarLJ 284 while examining the correctness is not regularising the teachers appointed on part-time basis when duty and functions assigned to them in no way different from that discharged by persons appointed on full time basis observed as follows:

"The question whether the petitioners are entitled as of right to have their services regularised and not deemed to have been appointed on regular basis in the matter of regularisation of their part-time services on full time basis, is really not the moot point for consideration. What is of relevance is the predicament in which the petitioners had been placed on account of the casual manner in which they have been appointed and paid salary on part-time basis in posts where

services are being rendered by them as if they were inducted on a full time basis. What cannot escape attention is that the nature of duties and functions they have been discharging all along are in no way different from the nature of duties and functions of Teachers appointed regularly on full time basis. What is worse is the sense of insecurity that is troubling the petitioners on account of the temporary term of office that is being given to them from time to time on the basis of academic year without assurance of permanency. Lease of life is being given to the petitioners at the end of each academic year totally at the mercy of the State Government. This I am afraid is not consistent with the avowed policy of the State aimed at promoting public interest."

While so observing, this Court issued direction to the State Government to take immediate steps to regularise by framing specific rules, and till then the teachers appointed on ad hoc basis are permitted to continue in service as:

"These writ petitions are allowed and a mandamus is hereby issued directing the State Government (Respondent-1 herein) to take immediate steps to consider the regularisation of the services of these petitioners by framing special rules, if such special rules are necessary for effecting regularisation, within a period of 3 months from the date of receipt of the copy of this order. Pending such action, the respondents are directed to continue them in service and extend the monetary benefits to the petitioners as are applicable to permanent employees in full time posts of the same cadre and service. In so far as petitioners 3 and 7 are concerned, it is hereby directed that petitioner-3 shall be reinstated and given the same treatment as the other petitioners and in respect of petitioner-7, the State shall consider his case for appointment as a Teacher in any of the Government High Schools, in any existing vacancy within 90 days from the date of receipt of the copy of this order."

13.3 In *Rattan Lal and Others Vs. State of Haryana and Others*, while considering the correctness of appointing teachers on ad hoc basis, the Supreme Court held that it is violative of Articles 14 and 16 of the Constitution. The Supreme Court held as follows:

"We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules the vacancies in which teachers appointed on an ad hoc basis are now working and to allow all those teachers who are now holding these posts on ad hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are not working on such ad hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of "ad hoc" appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case."

13.4 In *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, the Supreme Court held that those who are appointed and did not possess initial educational qualification but gained sufficient experience after many years of service are entitled to be employed permanently. The relevant portion reads as follows:

"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three years' experience, ignoring artificial break in service for short period/periods created by the management, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Therefore, the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts."

13.5 Similar view is taken by the Supreme Court in the *DHARWAD DISTT. P.W.D. LITERATE DAILY WAGERS EMPLOYEES ASSOCIATION AND ORS. ETC. v. STATE OF KARNATAKA AND ORS. ETC.*

13.6 Again in *JACOB M. PUTHUPARAMBIL AND ORS. v. KERALA WATER AUTHORITY AND ORS.* wherein it has been held as follows:

"But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by Sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employees which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered "age barred" for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune

his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution."

The Supreme Court in view of the principle laid down in SMT. P.K. NARAYANI v. STATE OF KERALA AIR 1984 SC 534 also held that those who had served for more than 5 years be allowed to appear for the next examination without raising the question of age-bar for seeking selection and till then they be continued in service. The Supreme Court also took a similar view in the case of R.A.K. JAIN v. UNION OF INDIA 1987 Supl. SCC 497.

13.7 In SRI RABINARAYAN MOHAPATRA v. STATE OF ORISSA AND ORS., AIR 1991 SC 1986 the Supreme Court while dealing with the scope of Article 14 of the Constitution observed that the teacher appointed on ad hoc basis should be regularised. The relevant observation reads as follows:

"An appointment of a teacher on 89 days basis with one day break which deprives a teacher of his salary for the period of summer vacation and other service benefits is wholly arbitrary and suffers from the vice of discrimination.

Under the Constitution the State is committed to secure right to education for all citizens. Bulk of population is yet illiterate. Till the time illiteracy is effaced from the country the resolution enshrined in the Preamble to the Constitution cannot be fulfilled. Education is the dire need of the country. There are neither enough schools nor teachers to teach. Insecurity is writ large on the face of the teaching community because of nebulous and unsatisfactory conditions of service. In order to make the existing educational set up effective and efficient it is necessary to do away with adhocism in teaching appointments."

Whereas the principles laid down by the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., reads as follows:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making Rules under the proviso to Article 309 of the Constitution or (in the absence of such Rules) by issuing Rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, Rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is

indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularisation.

xxx xxx xxx "Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are not entitled to regularisation in service".

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

The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

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

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

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

If for any reason, an ad hoc temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and

his appointment does not run counter to the reservation policy of the State."

From reading of above Decisions, it is clear that it is the duty of the State to give importance to education as the majority in the Country are still uneducated. Thus while giving effect to Directive Principles of State Policy regarding education that as far as possible the State or the authority shall give up the practice of making appointments on ad hoc or temporary basis and allow such teachers to continue for a long period without filling up such vacancies either by way of selection or recruitment. The basic principle underlined in all the Decisions relied upon by both sides is that it is the duty of the State or the authority in the matter of appointments as far as possible to appoint and not to terminate. Thus, acts of the State or the authority in the matter of selection or appointment shall always be fair, just and reasonable. The State's acts shall be above suspicion. It shall be a model employer. Its aim shall not be of exploitation of helpless position of the unemployed, but to protect them from arbitrary termination and also complying with rules if any regarding selection and appointment.

14. From the above discussion and the principles laid down in the Decisions referred to above it is clear that the action of the respondents in appointing the petitioners on ad hoc basis without disclosing when the selections were made or when the selected candidates did not report for duty and who were the candidates who went on leave is quite arbitrary. If really those who were selected were reported for duty, the respondent would not have resorted to appoint the petitioners for a considerable period on ad hoc basis and paying them a consolidated salary. It is also not in dispute that the petitioners were all sponsored by the concerned Employment Exchanges and possessed requisite qualification and on their appointment they were discharging their duties of those who were appointed on regular basis. Silence on the part of the respondent in not furnishing the required particulars goes to show that the petitioners appointed against posts existing but failed to fill up the same. In view of their continued service and helpless conditions and some of the petitioners are age-barred are the relevant circumstances for this Court to issue a Writ of Mandamus directing the respondents to consider the case of the petitioners for selection as teachers. It is not the case of the respondents that the petitioners were appointed on ad hoc basis or on temporary basis on account of fraud played or misrepresentation made by them or were appointed yielding to outside pressure. Though the petitioners are not entitled for regularisation as a matter of right, in view of their serving for a long period as teachers and possessing required qualification and that they acquired sufficient experience in teaching their request for selection deserves for consideration on compassionate grounds.

15. Hence, these Petitions are allowed and the respondents are directed to consider the case of the petitioners for regularisation if otherwise eligible as teachers in any of the Schools in this State or elsewhere sympathetically. If the posts held by the petitioners are actually the posts to be filled up by selection or their appointments were against leave vacancies, in view of the services

rendered by the petitioners, the respondents are directed to consider their case for selection for future selection as and when vacancies arise if they are otherwise duly qualified and wherever necessary relaxing the age limit, as they were initially appointed either temporarily or on ad hoc basis within the age limit.

No costs.