

(1995) 04 KAR CK 0004
In the Karnataka High Court
Case No : Writ Petition No. 12981 of 1994

Vajra Shree

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) ILR (Kar) 1836 : (1995) 3 KarLJ 602

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; Sashidhar S. Karmadi, HCGP for R-1 and R-2 and K. Raghavendra Rao, for R-3 and R-4, for the Respondent

Judgement

M.F. Saldanha, J.—As far as the field of Service Law is concerned, the Courts in this Country have for some time now been repeatedly deprecating sharp and unfair practices particularly when these relate to members of the teaching profession. The expectation was that with the passage of the time and the consistent disapproval in the strongest terms by the Higher Judiciary, that unethical and obnoxious practices would be discontinued. That unfortunately is not the case, and in the International Year dedicated to women, this High Court has come across one more instance where a lady teacher finds herself faced with an even more difficult problem insofar as, after having put in 6 years of service, when she requested for regularisation, her services were abruptly discontinued. What compounds the case is that when she approached this Court for redressal of her grievances, she has been faced with an abnormally high degree of resistance and the manner in which this litigation has been conducted, speaks volumes. This case represents the familiar situation that prevails in thousands of other similar ones where even though a clear vacancy exists, on all sorts of hollow and so called pious reasons, the petitioner was appointed on a temporary and time bound contractual basis and that too on a consolidated salary well below the one prescribed for that post. This practice is thoroughly dishonest and a Court can see through the games that are involved despite the furious

attempts to white-wash the situation insofar as the Management can hire and fire at will, conveniently flouting the provisions of the Regulations that apply and above all, get the same job done on a fraction of what a teacher would normally have to be paid. That these unpardonable practices should be rampant in a Country where the culture and heritage professes that members of the teaching profession should be regarded as "GURUS" is a matter of shame and it is equally necessary therefore that when those Cases come up before the Courts the correctives should be such as would apply to not only that but all similar situations.

2. The petitioner in this case was appointed as a Arts Teacher in the Seshadripuram Boys High School, Bangalore, on contract basis on 1.6.1988. She has been continued up to the year 1994 with the customary artificial breaks whereunder, the services of the poor Teacher are discontinued prior to the vacations and the person is reemployed thereafter. The petitioner was initially paid a consolidated salary of Rs. 500/- per month and thereafter, Rs. 1,150/- per month whereas the regularly recruited teachers were entitled to a basic pay alone of over Rs. 1,400/- per month. The Institution is an aided Institution and the petitioner has pointed out that she was appointed in one of the two clear vacancies which position is undisputed. The petitioner contends that the State of Karnataka has issued a Notification dated 19.2.1991 whereunder, it has been prescribed that teachers appointed on contract basis prior to 13th July, 1989, are liable for absorption. The petitioner further contended that the Supreme Court of India in the Decision reported in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, had directed that certain categories of teachers such as the petitioner who have been appointed on an ad hoc basis temporarily for years with break every year were liable to be regularised. The petitioner submitted that she has been discriminated against insofar as these principles have been made applicable in the case of other school teachers and that they have been denied to her by the respondent-Institution which is an aided Institution. Secondly, the petitioner submitted that this was a case in which she had applied to the Management to regularise her services and in order to hit back on at her for having asked for Justice, that her services had been discontinued. This last aspect of the matter assumes considerable significance because the respondent-Institution which is represented before me by Sri Raghavendra Rao and on whose behalf it has been contended that it is one of the reputed Institutions of this City ought to have been expected to behave better. It is obvious that the Management which had got away with these illegalities for years together was incensed by the request coming from a small person, and that too a woman and decided to hit back at her with such ferocity in the expectation that not only she no other similarly situated employee dare to stand up for their rightful entitlements. This attitude and behaviour is a matter of some seriousness and something which this Court did deprecate. In the course of the proceedings which have been spread over several months, the respondents were repeatedly directed to take corrective steps but their attitude has been so

hardened, that they prefer to litigate rather than observing the law. It is a lamentable fact that in the unequal fight between an employee and an Institution, even in instances where the employer has no case, legal arm twisting is resorted to with the knowledge that a single individual employee has very poor fighting capacity and that it becomes impossible to withstand long term protracted litigation and it is a tragedy of our times that in many such instances, the wrong doer succeeds by default. In this case, where the respondents were hell-bent on preventing the petitioner from continuing with her job functions, despite Interim Orders and directions from this Court, the respondents have successfully defied every one of them up to the present point of time and have kept her out of her job and have refused to pay her salary. The question immediately arises therefore as to what should be the attitude of the Court when faced with a situation of this type. If such a respondent is allowed to get away, it would send out the wrong signals particularly to lakhs of other similarly situated tortured and tormented employees and if they happen to be the members of the teaching profession and women, even more so, because the message would peter down that it is imprudent to even approach the Law Courts. In this context, therefore, a Court will have to come down severely in any case where such a situation is prevalent. To my mind, both on facts and in law, this is a case that could have been disposed of within a matter of minutes because the breach is as clear as a day light. The litigation was however conducted as though it is an epic case and the arguments went on interminably on behalf of the respondents so much so that statements and submissions have been repeated ad nauseum, the sole object being to pressurise the petitioner with the sheer length and expense of the litigation. The Supreme Court has repeatedly laid down that such action requires to be countered inter-alia by the award of exemplary costs as Judicial time is extremely precious, the Court proceedings are expensive and attempts to choke and obstruct the course of Justice must be sternly dealt with.

3. To summarise the submissions advanced on behalf of [the petitioner, her learned Advocate had contended that the Court will have to construe her appointment as being one made to a regular post on a permanent basis and it would therefore have to direct the respondent-Institution to pay her salary in that behalf and to treat her as a regular employee. Learned Advocate pointed out that there is no dispute about the fact that a vacancy did exist, that the petitioner is duly qualified, that she has been working in that post for the last several years and under these circumstances, there is no conceivable ground on which reliefs can be denied to her. The solitary justification for the action on the part of the respondents is that they are an aided Institution and that in all matters relating to employment they are governed by the Rules and Regulations laid down by the Department. It is contended that they are required to obtain the requisite sanction and follow the procedure prescribed in the Rules framed by the Department in all matters relating to the appointment of teachers. They contend that despite repeated request to the Department that the requisite sanction were not accorded and that therefore, they were left with no option

except to make ad hoc appointments and payments from year to year as it was absolutely necessary in the interest of the students that the requisite teachers must be made available by the Institution. What is basically contended is that the respondents have no power outside the framework of the Rules to either appoint or regularise the petitioner and that in these circumstances, they were left with no option except to do what they had been doing. There are several unanswered questions as far as these defence is concerned, the first of them being as to why, if the respondents claim to be so righteous did they deprive a lady teacher of the regular emoluments and that too during the vacations and why did they not take necessary steps to ensure that the requisite sanctions were accorded. On facts, the action of the defendants is not only defence less but calls for strictures.

4. As regards the question of maintainability of the Petition, I do not see much difficulty having regard to this aspect particularly after the series of Judgments dealing with the scope of Article 12 of the Constitution. The respondent-Institution is an aided institution and is amenable to the control and supervision of the State Authorities and therefore, regardless of its designation that it is a private School the present Writ would be maintainable. The petitioner's learned Advocate has for this purpose relied on a Decision of the Supreme Court reported in *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*,

5. The petitioner's learned Advocate supported his contention with regard to maintainability also on the basis of the Decision of the Supreme Court reported in AIR 1989 SC 88, *All India Sainik Schools Employees Association v. The Defence Minister-cum-Chairman, Board of Governors, Sainik School Society, New Delhi and Ors.*, wherein, while considering certain disparities as regards the emoluments and conditions of service between the employees of Sainik Schools and Kendriya Vidyalayas, the Court laid down that such institutions are amenable to the Writ Jurisdiction, it need to however add that the status of those Institutions is very different to the present one though, the principle of maintainability would apply. Similarly, in the case of *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others*, while dealing with a Higher Secondary School though run by a Private Trust, receiving 100% grant from Government, the Court held that it was amenable to the Writ Jurisdiction of the Court. Reliance was also placed on the Decision of the Supreme Court reported in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, While dealing with a Public Trust which had a temporary affiliation to the Gujarat University, the Supreme Court held that the issue of Mandamus is not confined to statutory authorities and instrumentalities of State but that it can be issued to any other person or authority performing a public duty. The learned Advocate also relied on another Decision of the Supreme Court reported in *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others*, wherein, the Supreme Court intervened to remove the disparity in emoluments of teachers employed in various Government aided

private schools and teachers employed in Government schools. As indicated by me earlier, the position in law is now well defined and I do not need to labour with this point any more beyond stating that it is not the mere get up of the respondents that is the criteria. But the real test is as to whether on facts, the relief claimed is against a person or body which would answer to one of the multifarious categories that have now been defined as being amenable to the Writ Jurisdiction. In this case, the respondents are an aided Institution subordinate to and under the control and supervision of State authorities and a Writ would certainly be maintainable in the present situation.

6. The main issue that falls for determination in this Petition is the question as to whether the Agreement entered into between the parties in the form of appointment orders which designate the petitioner as a contractual employee on a prescribed salary for a limited period of time namely, one academic year less the vacations can be upheld by the Court and if not, what is the effect. The submissions canvassed in considerable detail by the appellant's learned Advocate can be encapsulated within a narrow framework. He contends that there existed a regular vacancy and that the petitioner is eligible and fully qualified for appointment in that vacancy. The respondents, in order to deprive her of her rightful entitlements appointed her for a short period of time on a contractual basis and that too on a fixed salary which was much lower than what is normally payable for that job. The contention raised is that the petitioner had no option except to take what was given to her and her learned Advocate has drawn my attention to several passages from the Judgment of the Supreme Court in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*, In a very detailed articulation of the law on the subject running into as many as 339 paragraphs, the Supreme Court struck down certain unethical practices of the present type which were prevalent in the Corporation and had occasion to refer to them as "the Henry VIII clause" which virtually gave no option to the employee except to "take it or leave it". The Supreme Court, while dealing with several of the Constitutional safeguards and guarantees in relation to Service Law had occasion to observe that the overriding principle of fairness had to be enforced at all stages. The Court had occasion to follow several of the principles laid down earlier by the Supreme Court in the celebrated case of *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, The petitioner's learned Advocate has relied heavily on these two Decisions particularly the latter one in support of his plea that the contract between the parties will have to be struck down on the ground of lack of fairness and that, it will have to be construed as entitling the petitioner to a regular appointment. In the latter case, the Supreme Court has amplified the Doctrine of Unconscionability. In keeping with the ratio of that Decision, while examining the nature and circumstances of a contract of employment, a Court will be required to bear in mind the unequal status of the parties, the tendency to exploit, and enforce the contract in a manner that appeals to the conscience of the Court. The submission in this case is that the respondent took advantage of the fact that the

petitioner has no fighting power, that the employment field is so grossly overcrowded that an employee just cannot resist exploitation and the unfortunate situation that even the demand for Justice involves expensive and time consuming procedures which few citizens can afford and under these circumstances, that the petitioner's services were used for several years and that she was jettisoned only because she requested that she be given a fair deal. A perusal of the Case Law on this point indicates that the educational field has been notorious for incidents of this type, the root cause being that education has now become a big money spinning business and it is assumed that mal practices in the form of atrocities against members of the teaching profession can be committed, with impunity. That this field has deteriorated to permit atrocities of this type is a tragedy of the times, but what is even more deplorable is the fact that in a Country that professes a culture which prescribes that teachers are to be looked upon as "GURUS" instances are numerous where they are relegated to a position of bonded labour. When such instances come up before the Court therefore, it is very necessary that the Courts not only correct the atrocities with a degree of fairness but more importantly, that the wrongdoers be re-educated in what their duties and obligations are.

7. Petitioner's learned Advocate relied on *Dhirendra Chamoli and Another Vs. State of U.P.*, in support of his proposition that the petitioner is entitled to salary attached to the regular post on the principle of equal pay for equal work. A similar proposition was laid down in *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, about which there can be no two opinions. My attention was also invited to *Rattan Lal and Others Vs. State of Haryana and Others*, the Supreme Court struck down the obnoxious practice of appointing teachers on an ad hoc basis at the commencement of the year and terminating their services before the Summer vacation. Reliance was also placed on *Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others*, wherein, the Supreme Court intervened even to the extent of removing the disparity in emoluments of teachers employed in various Government aided Private Schools and teachers employed in Government Schools. The law on this point is well defined insofar as the Court will not permit deprivation of the rightful wages or salary that is normally attached to a post for a prescribed job merely because the employer resorts to some ingenious gimmicks in order to cheat the poor employee.

8. Petitioner's learned Advocate then drew my attention to the Judgment of the Supreme Court in *JACOB M. PUTHUPARAMBIL AND ORS., KERALA WATER AUTHORITY AND ORS.* AIR 1990 SC 2223, wherein, the Supreme Court while dealing with a situation where an employee was employed by way of a stop-gap arrangement till regular appointments were made, Where it was demonstrated that the employee possessed the requisite qualifications and had been continued for more than two years, the Court held that the employee was entitled to regularisation. In this regard, my attention was invited to a Division Bench Decision of this Court reported in *Tejaswini Patil and etc. Vs. Bangalore University*

and others, The Court was basically dealing with the question of capitation fee but had occasion to come down strongly on the aspect of unethical practices prevalent in the educational field particularly when it came to private educational institutions and held that it was very necessary to direct appropriate cleansing action even though these institutions claim to be private bodies. In *Sri Rabinarayan Mohapartra Vs. State of Orissa and others*, the Supreme Court had occasion to strike down an order appointing a teacher for 89 days at a time with one day break principally on the ground that it constitute a practice of adhocism. The Supreme Court had occasion, in *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, to come down heavily on certain practices that were rampant in this State as far as employees of Degree Colleges were concerned all of whom were being appointed temporarily for years with periodic breaks and directed that these employees would have to be regularised. A reference was also made to *State of Haryana and others Vs. Piara Singh and others etc. etc.*, *State of Haryana and Ors. v. Piara Singh and Ors.*, wherein, the Supreme Court disapproved of blanket orders to regularise the service of all temporary employees and the Supreme Court had occasion to lay down that this benefit would only be available to those who had continued for a fairly long spell. An indirect reference was made to the well known Decision of the Supreme Court reported in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, for the limited purpose of pointing out that the Writ Jurisdiction can and must effectively be used to correct injustice even in cases relating to private educational institutions which are amenable to the Writ Jurisdiction of the Courts. Lastly, the petitioner's learned Advocate drew my attention to a recent Decision of the Supreme Court reported in *Vijay Kumar and others Vs. State of Punjab and others*, wherein, on a complaint by certain part-time teachers that they were in fact required to work for longer hours than the regular employees, on lesser scales of pay the Supreme Court intervened to hold that they would be entitled to the full emoluments that were attached to that post. The ultimate thrust of those submissions is that it is contended, that on the facts of the present case the petitioner ought to be construed as a regular employee of the Institution and afforded all benefits attached to that post.

9. On behalf of the respondent-Institution. Mr. Rao has argued this matter at abnormal length and the arguments proceeded almost interminably until it was necessary for the Court to intervene and point out that the length of the litigation was working very adversely against the poor petitioner but more importantly, that the Courts cannot indulge in the luxury of devoting all the available Judicial time to only one case merely because the respondents desire to keep the litigation going on endlessly. It was contended that a perusal of the appointment letters will indicate that the appointment was purely contractual and that consequently, the Decision of the Supreme Court in *Karnataka State Private College Stop-Gap Lecturers Association* will not be applicable to the facts of the present case, On the contrary, learned Advocate submitted that there is a later Decision of the Supreme Court reported in *Director, Institute of Management*

Development, U.P. Vs. Smt. Pushpa Srivastava, wherein, the Supreme Court refused to direct regularisation in a case where an ad hoc appointment on contractual basis for short period of time had been continued a few times. This Decision has absolutely no bearing on the present case because undoubtedly, it was a later Decision of the Supreme Court, but the Court did not have occasion to consider the earlier Decision, More importantly, the reason why the Supreme Court refused to direct regularisation was only because the Institution had pointed out that due to financial constraints, the post had been abolished and that therefore, they had no option. It is also relevant for me to record that despite this position, the Supreme Court observed that the services should not be discontinued till the end of the calendar year and that efforts should be made to regularise the petitioner if possible in some other position.

10. The next argument that was canvassed is of some importance insofar as the respondents learned Advocate submitted that under the terms of appointment, which was for a prescribed period from year to year, that the petitioner had ceased to be an employee of the Institution on 10.4.1994 and that consequently, she cannot claim any protection of the Interim Orders. I need to record here that this Court granted an Interim Order in favour of the petitioner after hearing the petitioner's learned Advocate being obviously aware that such a mischievous contention would be raised and secondly, because the Court on the basis of this record was of the prima facie view that the petitioner has made out a case for reliefs and deserves protection. Despite this Interim Order merely because of some technical reasons namely, that the order lapsed for a few days as the Interim Order was not continued, the respondents learned Advocate contended that the School was justified in having appointed a new person in her place and tried to present the Court with a "fait accompli". This Court had occasion to warn the respondents and their learned Advocate at that point of time that the High Court expects the spirit of its order to be understood, respected and obeyed and where it is clear that there is a deliberate mala fide and motivated action directed to defeat the operation of a Judicial Order, that the Court will have to come down heavily on the guilty persons. Despite a direction that the petitioner should be permitted to work or that her salary will have to be paid from month to month, the respondents filed an Appeal against the Interim Order and obtained stay from the Appeal Bench as a result of which, the petitioner has not been able to work nor she received her salary. The petitioner's learned Advocate, when the matter was listed for hearing pointed out to me the grounds taken up before the Appeal Bench, the main argument being that the respondents contend that somebody else is working on that post and that therefore they are helpless. That issue is of little consequence except that it eloquently illustrates the lack of bona fides on the part of the respondents not only in their action vis-a-vis the petitioner but also in their conduct before this Court. To my mind, this type of legal hair splitting will not be of any assistance to the respondents because it is the larger issue namely, the question as to whether the circumstances under which the petitioner was appointed that will have to be construed in a manner that entitle

her to regularisation or not. According to the respondents' Advocate, there can be no question of regularisation because the post has come to an end and to this extent, he relies on the aforesaid Decision of the Supreme Court in Smt. Pushpa Srivastava's case and I am constrained to observe that this argument is devoid of substance and merit insofar as the post is very much in existence in this case but even in an instance where, the Court may find that a dishonest Management abolishes a post purely in order to cover up its wrongful action, a Court is not powerless to order composite corrective action.

11. On the basis of the contention that the rights of the petitioner has come to an end on 10.4.1994, the petitioner's learned Advocate contended that the Decision of the Supreme Court reported in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, wherein, the Supreme Court had occasion to interpret the nature and scope of proceedings under Article 226, it was contended that the petitioner is disqualified from enforcing any rights under this section. I do not need to labour with this Decision because the principles of law are well accepted and I have already held, that in the circumstances of the case, particularly after the decision of the Supreme Court in the *Central Inland Water Transport case*, there has been a considerable development of the Service Law as a result of which the present petitioner is fully entitled to enforce her rights under Article 226 of the Constitution. Petitioner's learned Advocate cited a recent Decision of the Rajasthan High Court reported in *Iswar Singh Vs. Ganga Singh and Others*, wherein, the Court relied on the Decision of the Supreme Court in the *Calcutta Gas Company's case* referred to supra and restated the position in law that it is necessary that the petitioner should first demonstrate that the relief is of the enforcement of the legal right before a Petition under Article 226 is maintainable. I have already clarified the position in law and I do not consider it necessary to repeat it once again,

12. The respondents' learned Advocate drew my attention to the Decision of the Supreme Court in *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, in support of his contention that in exercise of the Writ powers under Article 226 of the Constitution, the Court cannot direct the appointments to be made contrary to statutory provisions. In that case, the petitioner was claiming appointment on compassionate grounds but on facts, he was not eligible for the same having regard to the relevant Rules and the Court held that no direction could be issued that would effectively direct an appointment in breach of those Rules. I need to record here that various arguments were advanced on the basis, of this Decision. The principles of law as enunciated by the Supreme Court in this and several other Cases are well accepted but the respondents' learned Advocate sought to contend that the *Karnataka Private Educational Institutions Discipline and Control Act, 1975*, and the Rules framed thereunder particularly Chapter-2 Rule-6 prescribes the procedure to be followed in respect of permanent appointments which inter-alia requires that the post be advertised, that a Committee be set up etc., and that this Court is precluded from directing the appointment of the petitioner to that

post in a manner that would conflict with those provisions. The argument was supported through a reference to the Decision of the Supreme Court reported in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., In that case, the question arose whether an ad hoc appointment could be regularised by relaxing the requirement of selection through the Public Service Commission and the Court took the view that the executive cannot relax the requirement in exercise of general powers. The learned Advocate also relied on the Decision of the Supreme Court reported in The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, wherein, the Supreme Court laid down that a Mandamus cannot be granted to enforce an obligation flowing from a contract. In sum and substance, it was contended that the only rights which the petitioner was claiming to enforce were those which emanated from the contract between the petitioner and the respondent-Institution and to that extent therefore, no relief could be granted in the present proceeding. This submission was subsidiary to the main argument that was built up, namely, that where the appointment procedures required that a certain procedure was to be followed, that in the absence of those requirements, the petitioner cannot be straightaway rocketed into the post in question,

13. These submissions can be dealt with and disposed of together, In the first instance, the petitioner is not seeking to enforce a contract simpliciter. The record of this case indicates that the respondents who were running an educational institution under the supervisory control of the State authorities were in need of a teacher and even assuming their contention is correct, they were precluded in the normal course from straightaway making an appointment without the sanction of the concerned Departmental authorities, they were permitted to make a temporary appointment which they did. The circumstances of the case are crucial insofar as the petitioner is not in any way disqualified from being normally appointed to that permanent term post which in fact existed. If due to the combination of factors for which the Court does not have to point a finger at or blame any of the authorities, after a period of time a situation emerges whereby the petitioner had been for all intents and purposes performing the job functions as though she were a regular employee and where the situation has continued for long enough, the question arises as to whether or not enforceable rights have accrued to the petitioner by virtue of these subsequent developments, Regularisation in service by virtue of such a situation that has emerged and emanated and developed at a later point of time is entirely different from the normal course of recruitment and must also be distinguished from a situation whereby the process and procedures prescribed for recruitment are bypassed. The Court is required to consider as to whether the petitioner is entitled to the security of tenure which had been denied to her as also the question as to whether she can be deprived of the emoluments normally attached to that post. If the answer to these two questions is in the affirmative, the Court has the power to direct regularisation. Such a direction is not in conflict with the Recruitment Rules nor does it constitute an infringement of those Rules

and to my mind, the respondents learned Advocate was not at all justified in advancing the insolent contention that such a relief would be tantamount to a direction to breach the relevant provisions. The process of regularising an employee in an unusual situation in which a Court is required to some times interfere and point out at the stage in which the employee is placed, that the benefits of regular employment will have to be made available from that stage onwards in order to avoid miscarriage of Justice. It may be that in an appropriate case that regularisation is directed from an earlier point of time if the circumstances justify but this will make no difference to the legal situation at all. There can be no dispute about the fact that normal recruitment procedures cannot be and ought not to be bypassed and that if a Court finds that this has been deliberately or unjustifiably done or that in these circumstances regularisation is not the relief, such a direction will not be issued. One needs to take cognisance of the fact that regularisation is a subsequent corrective step which presupposes and admits of an irregularity at an earlier point of time which the Court neither approves of nor condones. The essential difficulty arises insofar as the aggrieved employee may be at the receiving end and the ends of Justice may require that the employee should not be penalised for what has happened. In directing regularisation, the Court is exercising overriding powers whereby the process of condonation is resorted to because that is the only just corrective which is permissible. It is now well settled law that in appropriate cases a Court must exercise these powers in order to enforce the rights that have accrued in favour of the employee which are vested rights and which cannot be technically relegated to the realm of mere contractual obligations as the respondents' learned Advocate has contended.

14. In his reply, the petitioner's learned Advocate has relied heavily on the celebrated Decision of the Supreme Court in the case of Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors. referred to by me earlier for purposes of emphasising the following propositions. Firstly, he points out that the Supreme Court has laid down that it is a Constitutional function to relieve a party from unconstitutional contracts. Secondly, the Court has laid down that security of service is an entitlement which an employee can insist upon and thirdly, that a lien to the post is available to an employee which aspect can be agitated. These are now well accepted principles of law which to my mind clearly apply to the facts of the present case.

14a. The petitioner's learned Advocate in response to the challenge on the aspect of maintainability on the ground that the employment was contractual, has placed reliance on another important Decision of the Supreme Court reported in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, where the Court was concerned with the blanket order passed by the State of U.P, removing all the Government Counsel. The Supreme Court had occasion to intervene in that action and to observe that the infringement of rights can be struck down if the action is arbitrary under Articles 14 and 16 and that the injustice can be rectified through a Writ. In paragraph-32 of the Judgment, the Court applied the

negative test of examining what would be non-arbitrariness and concluded by pointing out that the fairness of action is the ultimate deciding test. Learned Advocate also reiterated his submission that the Supreme Court in the celebrated judgment in the Central Inland Water Transport case laid down that unconscionable contracts which are opposed to public policy are void and that such provisions must be struck down. On the aspect of regularisation, petitioner's learned Advocate drew the attention of the Court to a Decision of the Supreme Court in the Decision reported in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, wherein, at paragraph-15, the Court had occasion to observe that the power to regularise is consistent with the Constitutional Philosophy of Social and Economic Justice. Making a reference to Article 41 of the Constitution, the Supreme Court observed that the principle of ensuring job security is an aspect which requires special attention particularly in those cases where attempts are made to circumvent such protection. A passing reference was also made to the epic Decision of the Supreme Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, wherein, the Supreme Court had occasion to amplify the duties of the State in situations of this type and particularly, the role of the Court in coming to the assistance of a citizen whose rights have been infringed upon.

15. The position that emerges can clearly be summarised insofar as the petitioner came to be originally appointed by the respondents in a clear vacancy principally because she possessed all the requisite qualifications for that post. Under normal circumstances, she would have been eligible for regular appointment which was denied to her. In the subsequent years, the situation continued with the petitioner being virtually cheated of not only her job security but her rightful emoluments even to the extent of her being denied any salary during the long vacations. That she worked in that post for several years on a fixed salary which was lower than the one prescribed for that post is undisputed. More importantly, there is nothing on record to so much as indicate that the services of the petitioner right through this period were anything but satisfactory. The first question arises as to whether the petitioner can be bound by the terms on which she was appointed and re-appointed namely, that it was a contractual appointment for a prescribed period of time. In the light of the legal position that now obtains, these conditions of appointment are unconscionable and consequently void and will have to be struck down. The last question that survives is as to whether the petitioner is entitled to regularisation. On the facts of the present case, the petitioner is definitely entitled to regularisation of service. It is true that it was only in April 1994 that the petitioner has approached this Court praying for regularisation. The question which the Court will have to look at is the point of time at which the petitioner's rights were infringed upon I have already held that on the facts of the present case, the petitioner has been wrongfully denied a permanent appointment right from the year 1988 when she was initially appointed to a permanent vacancy being fully qualified for the post. The fact that she has approached the Court in April 1994

only is understandable because the petitioner is a lady teacher and an approach to the Court is virtually a measure of the last resort. The facts of this case are eloquent in illustrating with what fear an individual, and that too a small person would approach the Court, because any success before a Judicial Forum of the case exposes the individual employee to a back-lash from the employer. I have already recorded at the beginning of this Judgment the utterly vindictive attitude displayed by the respondents to the extent of defying the orders of this Court just in order to break down whatever little fighting power the petitioner possesses. It is this situation that the Court has to take serious notice of and in the light of which, even though the petitioner has approached the Court only in April 1994, that she would be entitled to a direction for regularisation from the initial date of her appointment.

16. The Petition accordingly succeeds. The respondents are directed to treat the petitioner as having been regularly appointed to the post in question with effect from the date of her initial appointment i.e. 1.6.1988. The salary and allowances payable to the petitioner shall be recomputed and if the same are reimbursable by the Department, the respondents shall be entitled to claim the same particularly in the light of the grievance put forward by them that it was because of the authorities' inaction, that they could not make a permanent appointment. The arrears payable to the petitioner shall be computed and a statement thereof shall be furnished to her along with the payment of the arrears latest by 30.6.1995. If there is default in making the payments by that date, the petitioner shall be entitled to claim from the respondents interest at the rate of 18% p.a. on the amount outstanding from the date when each of the amounts were due running month to month up to the date of payment.

17. Having regard to the aforesaid order, the petitioner would normally have been eligible to rejoin her services from 1.4.1995. However, considering the fact that some other stop-gap arrangement has been made and that it is the end of the academic year, the petitioner shall be permitted to rejoin her duties when the new academic year commences in June 1995. However, since the respondents have not been paying the petitioner any salary and have successfully kept her out of her job for as long as one year period, it is directed that the normal salary payable to her for the post to which she has been regularised for the month of March 1995 shall be paid to the petitioner on or before 15.4.1995 and the salary for the months of April and May by the 15th of each of the subsequent months which amounts shall be adjusted while finalising the computation of arrears. Finally, the respondents are directed to pay to the petitioner the costs of this Petition particularly in view of the manner in which this litigation was protracted, dilated and prolonged. Rule absolute accordingly.