

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1227/2015
M.A.No.1862/2015
M.A.No.2392/2015
M.A.No.2025/2015
M.A.No.1103/2015

Order Reserved on: 14.09.2015
Order pronounced on 29.09.2015

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

1. Uday Veer Singh, aged about 39 years

S/o Sh. Mahi Pal Singh
R/o House No.55
Gali No.2B
Swatanter Nagar
Narela
New Delhi – 110 040.

2. Dr. Swati Jain, aged about 37 years

D/o Sh. Jinendra Kumar Jain
R/o Flat No.13, Pocket-1&2
Sector 3, Dwarka
New Delhi – 110 075.

3. Ms. Monika Garg, aged about 34 years

D/o Sh. Ram Gopal
9901, Sector C9
Vasant Kunj
New Delhi – 110 070.

4. Mr. Om Mishra, aged about 32 years

S/o Sh. G.C.Mishra
48, First Floor
Bhai Paramanand Colony
New Delhi – 110 009.

5. Ms. Pranoti S.K., aged about 29 years
D/o Sh. Shrikant Kavimandan
C/o Vipin Nagpal
House No.485, Third Floor
Mukherjee Nagar
New Delhi-110 009.
6. Ms. Jyoti Lodha, aged about 33 years
W/o Abhishek Jain
Building No.318N
First Floor, F-5
Near Shaheed Bhagat Singh
College, Chirag Delhi
New Delhi – 110 017.
7. Mr. Chandra Shekhar, aged about 28 years
S/o Sh. Chhote Lal Rajpoot
D 1/115, Ground Floor
Badarpur Extension
New Delhi.
8. Mr. Krishna Ranshu Ranjan, aged about 29 years
S/o Sh. Vishwanath Chaudhary
F-54, Gali No.1
Mohanbaba Nagar
Badarpur Border
New Delhi – 110 044.
9. Ms. Shashi Kala Nagarkoti, aged about 29 years
D/o Sh. H.S.Nagarkoti
131, New Managlapuri
Mehrauli
New Delhi – 110 030.
10. Mr. Vinay Arora, aged about 29 years
S/o Sh. Nand Kishore Arora
No.G-55A, Rama Park Road
Near Sunil Dairy, Mohan Garden
Uttam Nagaar
New Delhi – 110 059.
11. Mr. Karuna Shankar, aged about 26 years
S/o Sh. Ram Khelawan

F-54, Gali No.1
Mohanbaba Nagar
Badarpur Border
New Delhi – 110 044

12. Ritika Sarot, aged about 26 years
D/o Sh. Charan Sing Sarot
R/o House No.1868, Sector 8
Faridabad-121006.
13. Mr. Ashish Sankla, aged about 28 years
S/o Sh. Prabhu Dayal
A-99, Third Floor, Shivaji Vihar
Janta Colony
New Delhi – 110 027.
14. Ms. Priyanka, aged about 26 years
D/o Sh. Vijay Kumar
Divyajyoti Apartments, Block-C
SFS Flat No.411, Sector-19
Rohini, New Delhi – 110 089.
15. Ms. Anjali Arora, aged about 26 years
D/o Sh. Deenanath Arora
3121-C, Mahindra Park
New Delhi – 110 034.
16. Ms. Rinkle Aswani, aged about 34 years
G-16/11, Second Floor
Near Gurudwara, Malviya Nagar
New Delhi – 110 017.
17. Ms. P.Sujitha, aged about 26 years
Q.No.12, Type-4
Ambedkar Polytechnic Campus
Shakarpur, New Delhi – 110 092.
18. Ms. Tarannum Parvin, aged about 27 years
Working Women Hosten
Civil Lines
Gurgaon-122 002.

All the applicants are Assistant Professors..... Applicants

(By Advocate: Shri K.C.Mittal with Ms. Ruchika Mittal)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary
Delhi Secretariat
I.P.Extension
Delhi.
2. Secretary
Department of Training and Technical Education
Muni Maya Ram Marg
Near TV Tower
Pitampura
Delhi – 88.
3. Principal
GB Pant Engineering College
Okhla Industrial Estate, Phase-III
New Delhi – 110 020.
4. Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi – 110 003.
5. Shri Padam Singh
S/o Late Sh. Tejpal Singh
R/o 50/2, Jagriti Vihar
Meerut
UP-250004
6. Shri Rohit Anand@Rohit
S/o Sh. Ramesh Anand
R/o H.No.12A, Devi Murti Colony
Panipat
Haryana Pin 132103
7. Ms. Mamata
W/o Sh. Anand Kumar
R/o L-73, Miohan Garden

Uttam Nagar
Delhi – 110 059.

8. Ms. Archana
W/o Sh. Varun Tomar
R/o H-581 Alpha-II
Greater Noida
UP – 201 306.
9. Dr. Vishnu Vats
S/o Ravi Dutt Sharma
R/o 311, Gali No.6
Halkara-Kaun
Jwala Nagar
Shahdara, Delhi – 110 032.
10. Shri Sanjay Kumar
S/o Chandra Pal Singh
R/o Plot No.145(GF)
NITI Khand-I, Indrapuram
Ghaziabad (U.P.).
11. Shri Abdul Rehman
S/o Sh. Kalimullah
R/o A-61, Beta-1
Greater Noida
Distt. G.B.Nagar, UP 201306. ... Respondents

(By Advocate: Mrs. Avnish Ahlawat with Shri N.K.Singh for GNCTD,
Shri Ravinder Aggarwal with Shri Amit Yadav for UPSC and Shri Ajesh
Luthra for private respondents)

O R D E R

By V. Ajay Kumar, Member (J):

The applicants, who are working as Assistant Professors (both Technical and Non-Technical) under the 3rd Respondent- Govind Ballabh Pant Engineering College (for short 'GBPE College') on contract basis, filed the OA seeking the following reliefs:

- (a) Quash and set aside the Order dated 7.10.2014 being arbitrary, illegal, bad in law and without application of mind.
- (b) Direct the respondents to comply with the directions of Hon'ble High Court of Delhi and this Hon'ble Tribunal and issue order for regularisation of the applicants.
- (c) Quash and set aside the recruitment process pursuant to Advertisement No.17/2013 and also issued by the UPSC at Serial No.27 and 28 and Advertisement No.9/13 at Serial No.25 & 28 and frame policy/scheme to regularize all existing contractual employees pursuant to direction of Hon'ble High Court of Delhi and this Hon'ble Tribunal.
- (d) Direct the respondents to scrap and not proceed with the recruitment process in pursuance of Advertisement No.17/2013 at Serial No.27-28 and Advertisement No.9/13 at Serial No.25 & 28 being in violation of directions of this Hon'ble Tribunal.
- (e) Hold and declare the recruitment process in respect of the posts in question as initiated and conducted by UPSC is totally arbitrary, illegal and unconstitutional and violative of Article 14 and 16 of the Constitution and contrary to notified RRs of 2012 in respect of relevant posts, apart from being contrary to law laid down by the Hon'ble Court.
- (f) Any other order that may be deemed fit and appropriate in the circumstances of the case may also be passed."

2. Brief facts, as per the averments of the OA, are that the applicants are fully qualified and eligible for appointment as Assistant Professors, in their respective disciplines, in any Engineering College. The 3rd Respondent-GBPE College, vide public advertisements published in various news papers, invited applications for filling up of various faculty positions, on contractual basis, through walk-in-interviews, starting from the years 2010 to 2013. One such advertisement published in the year 2011 is enclosed as Annexure A3. Accordingly, the applicants participated in the interviews conducted by the respondents and on their selection, they were appointed as Assistant Professors (one such appointment order in respect of Applicant No.3 is filed as Annexure R1). All the applicants are working

as Assistant Professors in the 3rd Respondent-GBPE College from the date of their respective appointments on contract basis, to till date.

3. When the respondents instead of considering the representations of the applicants for regularization of the applicants as Assistant Professors, issued Advertisement No.17/2013 and Advertisement No.9/2013 for filling up of the various posts in 3rd Respondent-GBPE College, on regular basis, by conducting fresh selection process as per the notified recruitment rules, including the posts in which the applicants have been working on contract basis, the applicants filed OA Nos.492, 493 and 500 of 2014, seeking the following reliefs:

- a) To quash and set aside the recruitment process pursuant to advertisement no.09/2013 & 17/2013 issued by UPSC and consider the case of the applicants for regularization as per the policy already framed or to be framed by the respondents pursuant to the direction of the Hon'ble High Court of Delhi and/or the decision of the respondents.
- b) To direct the respondents to accept the applicant's application being a government servant and eligible for age relaxation for 05 years.....
- c) To direct the respondents to pay the applicant the pay and benefits as paid to the regular employees.
- d) Any other Order that may be deemed fit.

4. This Tribunal, by its order dated 17.02.2014, disposed of the said OA No.492/2014 and batch, as under:

"OA No.492/2014, OA No.493/2014 and OA No.500/2014 have been heard together on request of counsel for both parties stating that the issue and relief sought in these OAs are similar. Common orders are, therefore, being passed in all these OAs.

2. The applicants are working as Assistant Professor under the Government of NCT of Delhi in the GB Pant Engg. College, Okhla, New Delhi, Ch. Brahm Prakash Govt. Engineering College, Jaffarpur, Delhi and DIPSAR, Pushp Vihar, Delhi respectively. The applicants in these three OAs have challenged (i) advertisement No.17/2013

notifying vacancies at Serial No.27 & 28 in OA No.492/2014; (ii) advertisement No.09/2013 in respect of vacancy at Serial No. 25 in OA No.493/2014; and (iii) advertisement no.09/2013 in respect of vacancy at Serial No.25 in OA No.500/2014, inter alia stating that these advertisements are contrary to the directions of the Division Bench of the Honble High Court in the case of Sonia Gandhi and Others Versus Govt. of NCT of Delhi in W.P. (C) Nos.6798/2002 and 8093-8102/2003 vide order dated 06.11.2013. They have, therefore, sought relief by way of quashing the recruitment process pursuant to the impugned advertisements issued by the UPSC. Learned counsel also drew our attention to the Government of NCT of Delhi, Department of Training & Technical Education letter dated 27.01.2014 on the following subject:-

"Regularization of contractual employees working in Ch. Brahm Prakash Govt. Engg. College, G.B. Pant Engineering College and DIPSAR and quashing of advertisement for regular post.

It is thus apparent that respondents have issued instructions on the above subject calling for parawise reply/comments from the Principal, GB Pant Engg. College, Okhla, New Delhi, the Principal, Ch. Brahm Prakash Govt. Engineering College, Jaffarpur, Delhi and the Principal, DIPSAR, Pushp Vihar, Delhi. Counsel for applicants state that the process for regularization of contractual employees, including applicants, has thus started, which would be in compliance of the directions of the Honble High Court, as aforesigned.

3. In view of the facts stated above, we are not inclined at the moment to proceed further with these OAs but would only deem it sufficient and appropriate to direct the respondents to take a decision regarding regularization of the contractual employees, namely the applicants in these three OAs, within a period of 12 weeks from the date of receipt of a copy of this order in consonance with the rules and instructions and in the light of the directions of the Honble High Court in order dated 06.11.2013. It is further made clear that until the claim for regularization of services of the applicants in these OAs is considered and decided by the respondents at the competent level, they shall not proceed to fill up the related vacancies by any other process.

4. Three OAs are disposed of with aforesigned directions."

5. In pursuance of the aforesaid orders, the respondents considered the claim of the applicants for regularisation, however, rejected the same vide the impugned speaking order dated 07.10.2014 (Annexure A1). Aggrieved by the same, the applicants preferred the present OA.

6. This Tribunal, by its order dated 22.04.2015, passed in this OA, directed the respondents not to discontinue the services of the applicants and further to allow the applicants to participate in the impugned selection process provisionally. Accordingly, Applicants and other similarly situated contractual Assistant Professors participated in the impugned selection process. As per the merit position in the selection process, the private respondents No.5 to 11 and some others, including some of the contractual Assistant Professors, identically placed like the applicants were also selected for appointment. Two Assistant Professors, belonging to the discipline where no contractual Assistant Professors are working, were issued with the appointment orders and have joined and working as such on regular basis as on today. However, in view of the statement made by the learned counsel for the official respondents on 29.05.2015 in MA No.1862/2015, to the effect that no appointment to the post of Associate Professor (sic. Assistant Professor) would be made, the private respondents could not be appointed, though finally selected, till date. They were impleaded as party respondents No.5 to 11 to the OA vide MA No.2026/2015 dated 30.06.2015.

7. Heard Shri K.C.Mittal with Ms. Ruchika Mittal, learned counsel for the applicants and Mrs. Avnish Ahlawat with Shri N.K.Singh, learned counsel for Govt. of NCTD and Shri Ravinder Agarwal, learned counsel for UPSC and Shri Ajesh Luthra, learned counsel for private respondents, and perused the pleadings on record.

8. The various grounds raised by the learned counsel for the applicants in support of the OA averments can be summarised as follows:

- a) The applicants are fully qualified and eligible for selection and appointment for the post of Assistant Professors in their respective disciplines. They satisfied all the required qualifications in terms of the Advertisements issued for the purpose of selection on contractual basis as well as the qualifications in terms of the notified Recruitment Rules, and the impugned advertisements issued for the purpose of selection on regular basis (as there is no difference between the both).
- b) Since the applicants are working on contractual basis since long time, in the existing sanctioned posts, and since they are fully qualified and eligible and since they were selected by a duly constituted selection committee, at the time of their contractual appointment, they are entitled for consideration of their cases for regularisation as Assistant Professors.
- c) The only difference in the rules followed at the time of their selection as contractual Assistant Professors and in the impugned selection process, on regular basis, is consultation with Union Public Service Commission (UPSC).

Firstly consultation with UPSC is not mandatory, and secondly even, if the same is necessary, the same need not be prior consultation. Non-consultation with UPSC at the time of the applicants initial appointment on contractual basis, cannot be fatal to the case of the applicants, as there was no such requirement at that time.

- d) In view of Article 239AA, UPSC has no authority and power over Respondent No.1-Govt. of NCTD, and the State Public Service Commission, if any, alone will be competent and authorized to discharge the functions relating to the appointments in any of the services under the Respondent No.1.
- e) The decision of the Constitution Bench of the Hon'ble Apex Court in **Secretary, State of Karnataka & Others v. Uma Devi (3) & Others**, (2006) 4 SCC 1 or the other judgements on the similar lines have no application to the facts of the present case.

9. To buttress his contentions, the learned counsel placed reliance on the following decisions:-

1. Secretary, State of Karnataka Vs Uma Devi, AIR 2006 SC 1806
2. State of Karnataka & Ors. Vs M.L. Kesari & Ors., (2010) 9 SCC 247
3. UPSC Vs Girish Jayantilal Vaghela & Ors., AIR 2006 SC 1165

4. Roshan Lal Tandon & Anr. Vs Union of India & Anr. (AIR 1967 SC 1889)
5. Ram Gopal Chaturvedi Vs State of M.P. , AIR 1970 SC 158
6. J&K Public Service Commission Vs. Dr. Narinder Mohan & Others, AIR 1994 SC 1808.
7. Satya Narain Shukla Vs Union of India & Ors. (2006) 9 SCC 69
8. Om Prakash Singh & Ors. Vs Union of India & Ors. (Delhi High Court DB) 13 July 2010 [2010 Law Suit (Del.) 2973]
9. I.K. Sukhija & Ors. Vs Union of India & Ors. (JT 1997 (6) SC 201)
10. Nagpur Improvement Trust Vs Yadaorao Jagannath Kumbhare & Others (AIR 1999 SC 3084)
11. S.K. Chaudhary & Ors. Vs Govt. of NCT of Delhi & Anr. (Delhi High Court) 9 January 2013 I AD (Delhi) 779)
12. Union Public Service Commission Vs. Dr. Akshay Bahadur & Ors. (Delhi High Court DB) 28 October 2013, [2013 Law Suit (Del.) 4273]
13. Sachin Ambadas Dawale & Ors. Vs State of Maharashtra & Anr. (High Court of Bombay at Nagpur, Writ Petition No.2046/2010)
14. Sanjay Pal Rawat & Ors. Vs. The National Capital Territory of Delhi & Anr. (CAT, PB – OA No.1755/2014).

10. Per contra, the respondents submit as under:

- a) Once, the persons are selected, as per the selection process and requirements in terms of the statutory recruitment rules against the sanctioned vacancies, no Court or Tribunal can direct to regularise the services of persons, who were appointed purely on contract basis for a fixed period until the posts are filled on regular basis through UPSC, and without

undergoing any valid selection process, depriving the rights of the duly and validly selected candidates.

b) Even after the Constitutional amendment by way of adding Article 239AA, Delhi is still an Union Territory. The name of the Union Territory of Delhi is changed to that of National Capital Territory of Delhi, and though Legislative Assembly is created to legislate on certain aspects, but Delhi is continued to be an Union Territory and hence, the consultation with UPSC is necessary in respect of the matters of services of Delhi. More so, in matter of recruitment to Group 'A' services, such as the post of Assistant Professor in 1st Respondent-GBPE College.

c) Except, applicants No.1 and 2, who are over-aged, rest of the applicants have participated in the impugned selection process and after having came to know that they were not selected, challenged the selection. Hence, they are estopped from doing so.

d) The vires of the Recruitment Rules are not challenged and hence, they are to be followed scrupulously including the clause provided for consultation with UPSC.

e) In view of the Constitution Bench Judgement of the Hon'ble Apex Court in **Secretary, State of Karnataka & Others v. Uma Devi(3) & Others**, (2006) 4 SCC 1, no Court or Tribunal can give any directions for regularization of the

services of those persons who were recruited on Casual/temporary/ad hoc/daily wage/contract basis.

11. The learned counsel for the respondents placed reliance on the following decisions:

- a) M.P.State Coop. Bank Ltd., Bhopal v. Nanuram Yadav and Others, (2007) 8 SCC 264.
- b) Ramesh Chandra Shah and Others v. Anil Joshi and Others, (2013) 11 SCC 309.
- c) New Delhi Municipal Council v. State of Punjab and Others, (1997) 7 SCC 339.
- d) State of Bihar v. Upendra Narayan Singh and Others, (2009) 5 SCC 65.
- e) The Union of India & Ors. V. Shri Vinod N.C. & Ors., WPCT No.396/2010 of the High Court of Calcutta, decided on 29.03.2010.
- f) Dr. Renu Patel & Others v. Govt. of NCT of Delhi & Others, OA 48/2014 and batch, decided on 27.08.2014.
- g) Jatinder Kumar and Others v. State of Punjab and Others, (1985) 1 SCC 122.
- h) Dr. Divpreet Sahni v. GNCT of Delhi & Others (OA 988/2001), dated 19.9.2002.
- i) Dr. Mohd. Saleem v. GNCT of Delhi & Ors. (WP(C) No.5408-5412 of 2004) dated 08.12.2005.
- j) Govt. of NCT of Delhi & Ors. V. Dr. S.K.Nagar (WP(C) No.7787/2002) dated 26.08.2004.
- k) Union of India (UOI) and Ors. V. Harish Balkrishna Mahajan (Civil Appeal No.14527 of 1996) dated 23.10.1996.
- l) Dr. (Mrs.) Chanchal Goyal v. State of Rajasthan (Civil Appeal No.7744 of 1997) dated 18.02.2003.

h) Sh. Shankar Nath Tiwary v. Delhi Subordinate Services Selection Board & Ors. (CWP No.7217 of 2000 dated 23.07.2002.

12. Shri K.C.Mittal, the learned counsel appearing for the applicants submits that in pursuance of the recommendations of the 6th Central Pay Commission, the post of Lecturer was redesignated as Assistant Professor and the required qualifications were also changed, while for Lecturer the qualification was 1st Class Bachelor Degree or 1st Class Masters Degree, whereas for the post of Assistant Professor, the qualification was changed to B.E./B.Tech. and M.E/M.Tech. The Government of NCTD notified the Recruitment Rules on 25.06.2010 for the post of Lecturer (Technical and Non-Technical), and the qualification required was 1st Class Bachelor Degree or the 1st Class Masters Degree. Since the said RRs were not in consonance with 6th CPC recommendations, the same could not be implemented.

13. Pending finalization of the RRs, in accordance with the recommendations of the 6th CPC, the respondents issued public advertisements during 2010, 2011, 2012 and 2013, calling for applications for appointment as Professors, Associate Professors and Assistant Professors, on contract basis. Certain recruitment Rules for teaching faculty and other Group 'A' posts (Technical and Non-Technical) in the respondents-GBPE College, containing the eligibility criteria are also provided along with the said advertisements. The applicants having satisfied all the requirements mentioned therein, applied and participated in the interviews conducted by the specially constituted Committee involving experts and on their selection, were

appointed as Assistant Professors in respect of respective disciplines from respective dates and have been working till date against the sanctioned and existing vacancies, as detailed in the Table below:

Applicant No.	Name of the applicant	Date of Birth	Date of Joining	Presently working on the post of	Qualification	Whether applied against impugned advertisement? For which post	Whether shortlisted/ called for interview	Whether the applicants meet the requirements of RRs 2012/ previous RRs/ Draft RRs?	No. of years/ months/ days worked till impugned advertisement
1	Uday Veer Singh	5-Feb-76	21-Nov-11	Asst. Prof. (Applied Physics)	M.Sc. (Physics) M.Tech (Applied Phy.), NET JRF (2009), GATE 2009	This was vacancy meant for SC category against which the applicant was appointed but when the advertisement was issued in 2013 it was notified as General category vacancy. As such, the applicant was not allowed to participate and was of overage.		Yes	01/07/23
2	Dr. Swati Jain General category	21-Jun-77	1-Aug-12	Asstt. Prof. (Applied Chemistry)	MSc. PhD. (Applied Chemistry)	Cound not apply as overage		Yes	00/11/13
3	Ms. Monika Garg General category	28-Nov-79	10-Aug-07	Asstt. Prof. (ECE)	M.Tech(ECE), B.Tech(ECE), Ph.D.(pursuing)	Asstt. Prof. (ECE)	Appeared for Interview on 20 May 2015 (POST OF ASSISTANT PROFESSOR (ELECTRONICS & COMM.)) NOT SELECTED. HUMILIATED BY INTERVIEW PANEL FOR FILING CASE.	Yes	01/11/23
4	Mr. Om Mishra General Category	11-Jul-83	21-Nov-11	Asstt. Prof. (ECE)	Ph.D. (pursuing), M.Tech (ECE), B.Tech (ECE), DESD(C Dac)	Asstt. Prof. (ECE)	Applied but not shortlisted	yes	01/11/20
5	Ms. Pranoti S.K. General Category	6-Jul-85	21-Nov-11	Asstt. Prof. (CSE)	Ph.D. (pursuing), MS(IT) B.Tech(IT)	Asstt. Prof. (CSE)	Applied but not shortlisted	Yes	01/11/20
6	Ms. Jyoti Lodha (Jain) General Category	1-Mar-81	8-Dec-11	Asstt. Prof. (CSE)	M.Tech (CSE), B.Tech (CSE)	Asstt. Prof. (CSE)	Shortlisted but not called for interview	Yes	01/11/12
7	Mr. Chandra Shekhar General category	26-Jun-86	1-Aug-12	Asstt. Prof. (ECE)	M.Tech (VLSI Design & Embedded Sys), B.Tech(ECE)	Asstt. Prof. (ECE)	Applied but not shortlisted	Yes	01/03/09
8	Mr. Krishna Ranjan General Category	11-Aug-84	1-Aug-12	Asstt. Prof. (ECE)	M.Tech(ECE), B.Tech(ECE), GATE 2013	Asstt. Prof. (ECE)	Applied but not shortlisted	Yes	01/03/09
9	Ms. Shashi Kala Nagarkoti	26-Jun-85	1-Aug-12	Asstt. Prof. (ECE)	M.Tech(DSP), B.Tech(IC)	Asstt. Prof. (ECE)	Applied but not selected	Yes	01/03/09

	General category								
10	Mr. Vinay Arora General Category	24-Feb-86	1-Aug-12	Asstt. Prof. (ECE)	M.Tech(ECE-VLSI), B.Tech(ECE)	Asstt. Prof. (ECE)	Applied but not selected	Yes	01/03/09
11	Mr. Karuna Shankar	8-Feb-88	29-Jan-13	Asstt. Prof. (ECE)	M.Tech (ECE), B.Tech(ECE), GATE 2013	Asstt. Prof. (ECE)	Applied but not selected	Yes	00/09/12
12	Ms.Ritika Sarot General Category	21-Jul-88	23-Jan-13	Asstt. Prof. (ECE)	M.Tech(ECE), B.Tech(ECE), GATE 2013	Asstt. Prof. (ECE)	Applied but not selected	Yes	00/09/18
13	Mr. Ashish Sankla General Category	31-Jul-88	22-Jan-13	Asstt. Prof. (ECE)	M.Tech (CSE), B.Tech(CSE), NET 2012, GATE 2010	Asstt. Prof. (CSE)	Applied but not selected	Yes	00/09/19
14	Ms. Priyanka General category	18-Jul-88	22-Jan-13	Asstt. Prof. (CSE)	M.Tech (IT), B.Tech (IT)	Asstt. Prof. (CSE)	Applied but not selected	Yes	00/09/19
15	Ms. Anjali Arora Gen. Category	27-Sep-88	30-Jan-13	Asstt. Prof. (CSE)	M.Tech (IT), B.Tech (IT)	Asstt. Prof. (CSE)	Applied but not selected	Yes	00/09/11
16	Ms Rinkle Aswani General Category	27-May-80	17-Oct-13	Asstt. Prof. (CSE)	M.Tech (CSE), B.Tech (CSE), GATE-2008, NET-2012	Asstt. Prof. (CSE)	Applied but not selected	Yes	00/00/24
17	Ms. P.Sujitha General Category	18-May-88	17-Oct-13	Asstt. Prof. (CSE)	M.Tech (CSE), B.Tech (IT)	Asstt. Prof. (CSE)	Applied but not selected	Yes	00/00/24
18	Ms.Tarannum Parvin General Category	27-Oct-85	10-Oct-13	Asstt. Prof. (ECE)	M.Tech (ECE), B.Tech (ECE), GATE 2010	Asstt. Prof. (ECE)	Applied but not selected	Yes	00/01/00

14. The learned counsel further submits that finally the respondents have notified the Recruitment Rules vide Notification dated 14.06.2012, which are verbatim same as that of the Rules enclosed to the advertisements in pursuance of which the applicants were selected and appointed, except the Clause providing for "consultation with UPSC necessary". Accordingly, the learned counsel submits that though the applicants were described as contractual Assistant Professors, but for all purposes, they should be treated as persons appointed and working on regular basis, against the sanctioned and existing vacancies.

15. In the backdrop of the aforesaid facts, the learned counsel would contend that since opportunity to apply and to participate was given to all, i.e., as there was no violation of Articles 14 and 16 of the Constitution of India, and that the Rules were followed, and the

applicants satisfied the eligibility criteria, and that the selection process was undertaken and that the applicants were appointed against sanctioned vacancies, their appointment cannot be treated as illegal or irregular and hence, the Constitution Bench decision of the Hon'ble Apex Court in **Uma Devi's** case (supra) and the other decisions in the similar line, have no application to the facts of the present case.

16. To appreciate the rival contentions, it is necessary to examine the various documents on record. The relevant paras of the advertisements, in pursuance of which the applicants were appointed as Assistant Professors, on contract basis, read as follows:

Advertisement for the year 2010:

"Walk in interviews for the following posts of G.B.Pant Engineering College, Okhla, New Delhi, will be held on the dates indicated against each of them. The proposed appointments will be purely on contractual basis for a period of one year or till such time the posts are filled on regular basis, whichever is earlier.

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The interested candidates may report for the interview on the above mentioned dates from 10.30 A.M. to 12.30 P.M. at the Conference Hall, Department of Training & Technical Education, GNCT of Delhi, Pitam Pura along with relevant documents and bio-data. Retired persons below 65 years may also apply, however, for retired persons, if appointed, pay will be fixed as per rules. Details of Educational qualifications, work experience required of prospective applicants are available at the department website:<http://tte.delhigovt.nic.in>"

Advertisement for the year 2011:

**"WALK-IN-INTERVIEWS FOR RECRUITMENT OF
TEACHING FACULTY ON CONTRACTUAL BASIS IN GOVING
BALLABH PANT ENGINEERING COLLEGE, OKHLA PH-III,
NEW DELHI-110020**

Established in the year 2007, GBPEC is a rapidly developing Institute of the Govt. of NCT of Delhi mandated to offer super speciality programmes in the domain of Mechanical and

Automation Engineering, along with other programmes in related and frontal areas of Engineering and Technology. First batch of the institute has passed out and the placements have been excellent. This Institute requires the following teaching faculty immediately for which the walk-in-interviews will be held as per the schedule mentioned against each discipline. These appointments will be purely on contractual basis till 29.02.2012 or till the posts are filled on regular basis through the UPSC, whichever is earlier.

x x x x x x x x x x

Other Terms & Conditions

Retired and eligible persons below the age of 70 years can also apply; however, for such persons, if appointed, pay will be fixed as per the provisions contained in the CCS (re-employed pensioners) Rules, 1986. Appointment to the above posts is purely a stop-gap arrangement and for a period & conditions stated above. Interested persons should bring their written/typed application addressed to The Principal Secretary, DTTE and submit the same in his office at the time of interview along with complete documents (application on plain paper, original certificates along with one attested copy of each, one passport size photograph etc.). They may submit, if they so wish, these documents to the same office, in advance also."

Advertisement for the year 2012:

"Walk-in-interviews for Recruitment of Teaching Faculty/Other Group A Staff on Contractual Basis in Govind Ballabh Pant Engineering College, Okhla Phase-III, New Delhi-110020

Established in the year 2007, GBPEC is a rapidly developing Institute of the Govt. of NCT of Delhi mandated to offer super speciality programmes in the domain of Mechanical and Automation Engineering, along with other programmes related to frontal areas of Engineering and Technology. First batch of the institute has passed out and the placements have been excellent. This Institute requires the following teaching faculty immediately for which the **walk-in-interviews** will be held as per the schedule mentioned against each discipline. These appointments will be purely on contractual basis till 28.02.2013 or till the posts are filled on regular basis through the UPSC, whichever is earlier.

x x x x x x x x x x

Other Terms & Conditions

1. Age limit: 35 years for Assistant Professor, Librarian, Director of Physical Education & 50 Years for all other posts.
2. Reservation to the above posts shall be made as per rule/orders of the Govt. of NCT of Delhi issued from time to time.
3. Retired and eligible persons below the age of 65 years can also apply; however, for such persons, if appointed, their pay will be fixed as per the provisions contained in the CCS (re-employed pensioners), Rules, 1986.

4. Appointment to the above posts is purely a stop-gap arrangement and for a period & conditions stated above.
5. Number of posts may vary without any further notification.
6. If candidates are not available/found suitable for senior positions, the department may select candidates for lower position against advertised senior positions.
7. Candidates claiming benefits against reserve category should produce original certificates in support of their claims. In case of OBC/SC category of candidates they must produce OBC/SC certificate issued by the competent authority of Government of NCT of Delhi only. All other OBC/SC category candidates with certificates issued from outside of Delhi will be treated at par with the General category candidates, if otherwise found eligible.

Interested persons should bring their written/typed application addressed to The Secretary, DTTE and submit the same in his office at the time of interview along with complete documents (application on plain paper, original certificates along with one attested copy of each, one passport size photograph etc.). They may submit, if they so wish, these documents to the same office, in advance also. This is issued with the approval of the competent authority.”

Advertisement for the year 2013:

“Walk-in-interview for Engagement of Teaching/Other Faculty on Contractual Basis

Walk-in-interviews for selection of candidate for the following posts will be held, as per the schedule mentioned against each discipline/department, for engagement on purely contractual basis, for the following 03 UG & PG Level Engineering Colleges under the Government of Delhi.

1. Govind Ballabh Pant Govt. Engineering College (GBPEC), Okhla Industrial Estate, Phase III, New Delhi-20.
2. Xxx x x x x x xxxx xx x x x x x x
3. Xxx x x x x x x x x x x

Interested persons must be present on the date & time of interviews along with one passport size photograph and bio-data. They must also bring original certificates in support of their Educational/other Qualifications, Experience, Category etc. For verification, along with one set of attested copies for prior submission, failing which they may not be permitted to appear for the interviews.”

17. A bare perusal of the aforesaid advertisements, and the offer of appointment letters issued thereto, clearly shows that the recruitment

is purely for a stop-gap arrangement and that the same will not confer any right on the appointees over the relevant posts. Hence, the contention of the learned counsel that the selection and appointment of the applicants should be treated, for all purposes, as regular recruitment, cannot be accepted. Further, if an advertisement calling for applications for appointment on casual/ad hoc/temporary/contract/daily wage, for a specific period, all the eligible persons may not apply if they are interested only in regular recruitment and appointment. Hence, it cannot be said that just because a public advertisement is issued providing opportunity to all the eligible persons to apply, there is no violation of Articles 14 and 16 of the Constitution of India, if the contractual appointees are regularized without there being any fresh opportunity to all the eligible persons by conducting regular selection for regular recruitment as per the notified Recruitment Rules. Accordingly, it cannot be stated that the cases of the applicants do not fall within the ambit of the Hon'ble Apex Court's Judgement in **Uma Devi** (supra).

18. The applicants cases cannot also be considered for regularisation under the exception mentioned in para 53 of **Uma Devi's** case (supra) as they have not worked for any considerable period. None of the applicants even worked for more than two years, and in fact, half of the applicants not even completed one year as on the date of issuance of the impugned advertisement for regular recruitment. For identical reasons, the applicants are also not entitled for the benefits of the

Judgement of the Hon'ble High Court of Delhi in **Sonia Gandhi** (supra).

19. The Recruitment Rules for the post of Assistant Professor (Technical & Non-Technical) in Govind Ballabh Pant Engineering College, Govt. of NCT of Delhi, issued by the Department of Training and Technical Education, vide Notification dated 14.06.2012, are specifically read as under:

Name of the post	No. of post	Classification	Pay Band & Grade Pay/Pay Scale	Whether Selection or non selection post	Age limit for direct recruits
1	2	3	4	5	6
(iii) Assistant Professor (Technical/ Non- Technical)	40* *(2012) Subject to variation dependent on workload	General Central Service, Group "A" Gazetted Non-Ministerial	Rs.15600-39100 with AGP of Rs.6000/-	N.A.	<p>Not exceeding 35 years (Relaxable for Government Servants upto 05 years in accordance with the instructions or orders issued by the Central Government.)</p> <p>Note: The crucial date for determining the age-limit shall be the closing date for receipt of applicants from candidates in India (and not the closing date prescribed for those in Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur, Nagaland, Tripura, Sikkim, Ladakh Division of Jammu and Kashmir State, Lahul and Spiti District and Pangi Sub-Division of Chamba District of Himachal Pradesh, Andaman and Nicobar Islands or Lakshdweep.)</p>

Educational & other qualification required for direct recruits	Whether age & educational qualifications prescribed for direct recruits will apply in the case of Promotees	Period of Probation, if any	Method of recruitment whether by direct recruitment/ absorption & % of the vacancies to be filled by various method	In case of recruitment by promotion / deputation / absorption Grade from which promotion / deputation / absorption to be made	If a DPC exists what is its composition	Circumstances in which UPSC to be consulted in making recruitment

7	8	9	10	11	12	13												
Essential (For Technical) B.E./B.Tech and ME/M Tech in relevant branch with First Class or equivalent either in BE/B Tech or ME/M.Tech from a recognized University. Note 1:- The exact requirement of a particular engineering discipline/branch with specialization will be indicated at the time of each recruitment. Note 2:- If a Class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first class/division. If a Grade Point system is adopted the CGPA will be converted into equivalent marks as below:- <table> <tr> <td>Grade Point</td> <td>Equivalent Percentage</td> </tr> <tr> <td>6.25</td> <td>55%</td> </tr> <tr> <td>6.75</td> <td>60%</td> </tr> <tr> <td>7.25</td> <td>65%</td> </tr> <tr> <td>7.75</td> <td>70%</td> </tr> <tr> <td>8.25</td> <td>75%</td> </tr> </table> Note 3: Qualifications are relaxable at the discretion of the UPSC, for reasons to be recorded in writing, in the case of candidates otherwise well qualified.	Grade Point	Equivalent Percentage	6.25	55%	6.75	60%	7.25	65%	7.75	70%	8.25	75%	N.A.	1 Year for Direct Recruit s	By Direct Recruit-ment	N.A.	Group-A DPC (for confirmation): - 1. Chief Secretary, Govt. of NCT of Delhi-Chairman 2. Principal Secretary/ Secretary concerned in the Department-Member 3. Head of Department concerned unless He/She is ex-Officio-Secretary. Govt. of NCT of Delhi-Member.	Consultation with UPSC necessary
Grade Point	Equivalent Percentage																	
6.25	55%																	
6.75	60%																	
7.25	65%																	
7.75	70%																	
8.25	75%																	
Essential: (For Non-Technical) i) Good Academic record as defined by the concerned University with atleast 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the Master's degree level in a relevant																		

<p>subject from an Indian University or an equivalent degree from an accredited foreign University.</p> <p>(ii) Passed the National Eligibility Test conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET.</p> <p>(iii) Notwithstanding anything contained in (i) and (ii) above, the candidates, who are, or have been awarded a Ph. D. Degree in accordance with the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the recruitment of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/College s/ Institutions.</p> <p>(iv) NET/SLET/SET shall also not be required for such masters programme in disciplines for which NET/SLET/SET is not conducted.</p> <p>Note 1:- Ph. D. Shall be from a recognized University.</p> <p>Note 2:- The exact requirement of the subject/discipline or Science/Humanities, will be indicated at the time of each recruitment.</p> <p>Note 3: Qualifications are relaxable at the discretion of the UPSC, or reasons to be recorded in</p>						
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writing, in the case of candidates otherwise well qualified.						
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20. The applicants have not challenged the vires of the notified Recruitment Rules of 2012. In the absence of such a challenge, there is no escape from following the same scrupulously, including the consultation with the UPSC while making the regular recruitment. Admittedly, there was no consultation with the UPSC at the time of the applicants' appointment on contractual basis. Moreover, the advertisements, in pursuance of which the applicants were appointed, clearly mentioned that their appointment will be purely on contractual basis and till the posts are filled on regular basis through the UPSC, whichever is earlier. Hence, the applicants cannot now contend that there is no necessity for UPSC's consultation.

21. Article 239AA, which was inserted by the Constitution (69th Amendment) Act, 1991, w.e.f. 01.02.1992, the relevant paragraphs of which and other relevant Articles 239 and 320 read as under:

Article 239:

[239. Administration of Union Territories: (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

Article 239AA:

[239AA. Special provisions with respect to Delhi:-

(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

Article 320:

320. Functions of Public Service Commissions:- (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor [Neelima v. State of Haryana, AIR 1987 SC 169 – Commission's duty to forward names] of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor [Keshave Ram Pal (Dr.) v. Uttar Pradesh Higher Education Services Commission, 1986] [1 SCC 671 – Method of Selection], as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor [Neelima v. State of Haryana, AIR 1987 SC 169 – Commission's duty to forward names] of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

22. In view of the aforesaid Articles, and as rightly contended by the respondents that the National Capital Territory of Delhi is still continued to be as an Union Territory only and accordingly, consultation with UPSC is necessary in the matters of recruitment for various services of the same.

23. In **Secretary, State of Karnataka & Others v. Uma Devi & Others**, AIR 2006 SC 1806, the Constitution Bench of the Hon'ble Apex Court held that

"5. appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates.

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..... however, made one exception to the above position and the same is extracted below:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128] : (AIR 1967 SC 1071); R.N. Nanjundappa [1972 (1) SCC 409] : (AIR . 1972 SC 1767) and B.N. Nagarajan [1979 (4) SCC 507] : (AIR 1979 SC 1676) and referred to in para 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 the 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 the 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...."

24. In **State of Karnataka & Others vs. M.L.Kesari & Others**

(2010) 9 SCC 24, the Hon'ble Supreme Court, explained the exception given by the Constitution Bench at Para 53.

25. In **Union Public Service Commission v. Girish Jayanti Lal Vaghela & Others**, AIR 2006 SC 1165, the respondent was appointed as Drugs Inspector on short term contract basis on a fixed salary for a period of six months from the date of joining or till the date the candidate selected by UPSC joined duty on regular basis, whichever was earlier and the appeal of UPC was allowed by holding that the appointment of the respondent therein, was not made in a manner which could even remotely be said to be compliant of Article 16 of the Constitution. The learned counsel cited this judgment to show that in his case, public advertisement was issued and hence can be treated as valid appointment.

26. In **J & K Public Service Commission etc. v. Dr. Narinder Mohan and Others etc.**, AIR 1994 SC 1808 held that rule requiring the selection through Public Service Commission cannot be relaxed by executive in exercise of its general powers.

27. In view of our finding that none of the applicants worked for more than 2 years, and are governed by the law declared by the Hon'ble Apex Court in **Uma Devi** (supra) and that the consultation with UPSC is mandatory, the various decisions relied on by either side need not be gone into, as they are not proposing any law, contrary thereto.

28. It is submitted by the learned counsel for the official respondents that 40 sanctioned posts of Assistant Professors are available in the GBPE College. Out of the same, for 29 posts the regular process of recruitment was initiated and completed. The private respondents and some others, including two persons who were originally appointed on contract basis, i.e., identically placed like the applicants, were selected against different disciplines. Since there were no contract Assistant Professors in English (one post) and Maths (two posts) disciplines, the candidates selected in pursuance of the impugned advertisements, were issued with appointment orders and accordingly they have already joined and working. In view of the undertaking given, though selected, the private respondents were not issued with the appointment orders till date.

29. After the impugned advertisements were issued calling for applications, for selection to the posts of Assistant Professors, in various disciplines, except Applicant Nos.1 and 2, as they are over-aged, have applied along with others, without raising any objection. In view of receipt of large number of applications, the Commission, in terms of the impugned advertisement, invoked the short-listing criteria, and accordingly short-listed only 94 candidates for interview, and only 1 applicant, i.e., applicant No.3 alone called for the interview, as only she could satisfied the short-listing criteria. Thereafter, the applicants filed the OA Nos.492 of 2014 and batch, questioning the impugned advertisements, in pursuance of which they have also applied.

30. Accordingly, the respondents rightly submitted that the applicants having applied in pursuance of the impugned advertisements, and having participated in the selection process, are estopped from questioning the same.

31. In the aforesaid facts and circumstances and for the reasons, the OA is devoid of any merit and accordingly the same is dismissed. Accordingly, the interim directions are vacated and the MAs are disposed of. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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