Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.2956/2014
M.A.No.2527/2014

Order reserved on 5th January 2016

Order pronounced on 30th March 2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

1. Smt. Promila Sejwal w/o Shri Satender Kumar
r/o Village and Post Naya Bans
Delhi-82, age 36 years

Subject: Recruitment
Age 35 years
Deptt. MCD
Group C

2. Smt. Anita w/o Sh. Ranvir Singh
r/o 57, Ladpur, Delhi-81
V & PO Ladpur, Delhi
Age 36 years

3. Smt. Anita w/o Virender Kumar
r/o Pana Paosian Narela,
Delhi-40
Age 37 years

4. Bhupinder Kaur w/o S. Baldev Singh
r/o 14/12 Subhash Nagar
New Delhi-27
Age 36 years

5. Kiran Bala w/o Sh. Virender Saini
r/o H.No.80, Saini Street
Rampura, Delhi-35
Age 37 years

6. Smt. Bhawana Devi w/o Sh. Anil Kaushik
r/o H.No.W-126 Chander
Shekhar Azad Gali, Babar Pur
Delhi-32
Age 36 years

7. Smt. Sunita Mann w/o Shri Rakesh Mann
r/o Village & PO Naya Bans
Delhi-82
Age 36 years

8. Smt. Sunita Devi d/o Sh. Khazan Singh
r/o H.No.408, Begumpur
Delhi-86, Near MCD School
Aged 37 years

9. Sandhya Rai w/o Sh. Anurag Shankar Singh
r/o F/13 Mehar Chand
d/s Mkt. Lodhi Road, New Delhi-3
aged 36 years

10. Sunita d/o Mr. Rajpal Singh
r/o J.R .Complex I, H.C.M.R. Farm
Mandoli, Delhi-93
Aged 38 years

11. Rajni Gautam w/o Aditya Kumar
r/o 17 Lord Buddha Apartment
Inder Enclave, Rohtak Road, Delhi-87
Aged 30 years

12. Rashmi Sharma
w/o Kamal Kishore Sharma
r/o RZ J. 9.A/223, West Sagar Pur
New Delhi-46
Aged 28 years

13. Shalini Sharma w/o Mudit Saxena
r/o HN-1/6119-A Street No.2
East Rohtash Nagar, Shahdara, Delhi-32
Aged 29 years

14. Farzana w/o Zahid Hussain
r/o 1/238, Shri Ram Nagar
GT Road, Shahdara
Delhi-32
Aged 27 years

15. Meena w/o Rakesh Arora
r/o E-36, Patel Nagar II
Ghaziabad,
Aged 26 years

16. Hemlata w/o Rakesh Kumar
r/o M-285 A Block, East Gokalpur
Loni Road Shahdara, Delhi-94
Aged 30 years

17. Rajinder Kaur w/o Gurpreet Singh
r/o A-37-38, Himgiri Enclave
Chander Vihar, Nilothi Extn. New Delhi-41
Aged 30 years

18. Vandana Gupta w/o Sunil Gupta
r/o I-2-234, Sector 16, Pkt 2
Rohini, Delhi
Aged 30 years
All the applicants are contract Teachers in MCD

.. Applicants

(Mr. Ranjit Sharma, Advocate)

Versus

1. Govt. of NCT, Delhi
Through the Principal Secretary
New Secretariat, ITO, Delhi

2. Delhi Subordinate Services Selection Board
(DSSSB) Through its Secretary
At: FC-18, Industrial Area, Karkardooma
Delhi

3. South Delhi Municipal Corporation
Through the Commissioner
At SP Mukherjee Civic Centre
JLN Marg, New Delhi-2

4. North Delhi Municipal Corporation
Through the Commissioner
At SP Mukherjee Civic Centre
JLN Marg, New Delhi-2

5. East Delhi Municipal Corporation
Through the Commissioner
CSIDC Building, Patpar Ganj
Industrial Area, New Delhi

..Respondents

(Mr. Amit Anand, Advocate for respondent Nos. 1 and 2,
Mr. Umesh Joshi, Advocate for respondent No.3,
None for respondent No.4, and
Ms. Sangita Rai, Advocate for respondent No.5)

O R D E R

Mr. Sudhir Kumar:

This O.A. has been filed by eighteen applicants, along with M.A. No.2527/2014 praying for their being allowed to join together in filing the O.A. That M.A. was never allowed, and after having heard the case, we intend to pass orders on that M.A. along with the orders on the O.A.

2. Out of the eighteen applicants, who are before us, the prayers are different in respect of first eight applicants (applicant Nos. 1 to 8), who were overage at the time of filing of applications for the examination for recruitment to teachers notified at Annexure A/1 (Advertisement No.02/2010). The closing date for receipt of the applications was 30.07.2010. The prayers of the first eight applicants (applicant Nos. 1 to 8),

therefore, relate to relaxation in age. The cases of other ten applicants (applicant Nos. 9 to 18) are different. Since they were not so overage as on the closing date for the receipt of the applications, they had been issued admit cards for taking the examination notified vide above-cited Advertisement in the normal course, even before filing the O.A., and they have only prayed for weightage of their experience as Contract Teachers to be provided to them in the process of selection. The reliefs, as prayed for in the O.A., are as follows, and as was clarified and submitted during the arguments, the prayer at 8 (i) below was in respect of applicant Nos. 1 to 8 (instead of applicants Nos. 1 to 10, as mentioned in the O.A.), and the prayer at 8 (ii) was in respect of applicant Nos. 9 to 18 and not for applicant Nos. 1 to 8:

> "i. direct the respondents to grant age relaxation to Applicants 1-10 for appearing in the examination scheduled for 31-8-2014 for selection as Assistant Teacher (Nursery) post code No.68/2010 in pursuance Advertisement no.02/2010;
>
> And
>
> ii. direct the respondents further to give the Applicants' experience weightage in the matter of selection as Assistant Teacher, Nursery;
>
> And/Or
>
> iii. pass such other order/s as may be deemed fit & proper."

3. The facts of the case lie in a very narrow compass. All the applicants had applied for selection as Assistant Teacher (Nursery) (Female) in the erstwhile unified Municipal Corporation of Delhi ('MCD', in short), which has since been trifurcated into three Municipal Corporations arrayed before us as respondent Nos. 3 to 5. They were already working as Assistant Teachers (Nursery) in M.C.D. on contract basis for a long time. No proper

recruitment had been held for the concerned posts, and by the time the Advertisement No.02/2010 was issued, applicant Nos. 1 to 8 had become overage, and, therefore, their applications were rejected by respondent No.2 – Delhi Subordinate Services Selection Board ('DSSSB', in short). The applicant Nos. 9 to 18 have, on the other hand, prayed weightage for their experience of teaching on contract basis, since the year 2003 in some of their cases.

4. The applicants have tried to derive sustenance for their pleas from the order dated 25.05.2010 (Annexure A/3) through which the Lt. Governor of Delhi was pleased to grant one time relaxation in age to 347 contract teachers, who had, at that time, been listed as having been engaged by the MCD, for the purpose of their appearing in the competitive examination for the said posts of Teachers (Primary) to be conducted by respondent No.2 – DSSSB, stating clearly that this relaxation shall not be quoted as a precedent in future. The names of the applicants of this O.A., however, did not figure in that list of 347 Contract Teachers. The applicant No.1 Promila Sejwal had soon thereafter filed her O.A. No.2555/2010 before this Tribunal, which came to be allowed and disposed of on 20.01.2011, directing the competent authority to consider granting relaxation in the matter of age-related eligibility to her. Repeating the same prayer once again, four other persons, namely, Anshu Bala, Reetika Malhotra, Taruna Rani and Sudesh, who are not applicants before us in the present O.A., had filed O.A. No.2423/2013, in which, through the interim order dated 22.08.2013, they were allowed to appear in the concerned examination, subject to final outcome of that O.A.

5. Applicant No.1 has claimed that though this Tribunal had allowed her O.A. No.2555/2010 by the order dated 20.01.2011, and had directed the respondents

for consideration of her case for age relaxation, still the respondents had, thereafter, rejected her application.

6. The claim of the applicants in this O.A. is that this Tribunal had held in its judgment/order dated 20.01.2011 in O.A. No.2555/2010 that the applicants, who had been teaching since 2003, had enough experience, and deserved grant of weightage in the matter of selection, which weightage has also been denied by the respondents to them. The applicants have assailed the actions of the respondents on the ground that when one time relaxation was given to all the teachers, who had been working on contract basis, rejection of the applications of applicant Nos. 1 to 8 (wrongly mentioned in the prayers for relief column as applicant Nos. 1 to 10) on the ground of being age barred is illegal, arbitrary and discriminatory. The applicants had further taken the ground for grant of weightage in the matter of selection, as they have gained immense experience as contract teachers, and deserve to be regularized in the post concerned, and, therefore, in the matter of final selection, they deserve some weightage.

7. The respondents filed their counter replies in stages. Respondent No.3 – South DMC filed its counter reply on 14.01.2015. It had taken a preliminary objection that the claim of the applicants is barred by limitation and contrary to Section 21 of the Administrative Tribunals Act, 1985, as the last date for submission of application forms for the concerned posts under Post Code No.68/2010 was 30.07.2010, and the applicants have approached this Tribunal belatedly. It was also submitted that though all the records pertaining to the cases of the applicants are with respondent No.2 – DSSSB, however, they are not eligible for being considered for the reason of their being overage at the time of submission of application forms. It was denied that the applicants had, in any manner, been denied the one time age relaxation given to all teachers, who had been working on contract basis since 2003, and it was further denied that they

are entitled to any weightage in the matter of selection. Therefore, respondent No.3 had prayed that the applicants should be put to strict proof of their averments, and had submitted that the present O.A. being devoid of merits, it is liable to be dismissed.

8. Respondent No.4 – North DMC filed its counter reply on 06.02.2015. It was submitted that the applicants have not given their places of postings from the dates of their initial engagement as contract teachers, in order to be able to determine as to whether they were really continuously engaged since 2003, and it was submitted that the answering respondent No.4 being only a proforma party, the averments of the applicants are to be replied to by respondent Nos. 1, 2 and 3 mainly.

9. Before the counter reply on behalf of respondent No.2 could be filed, the applicants had, on 17.08.2015, filed their rejoinder to the reply filed on behalf of respondent No.3. In this, they had reiterated that applicant Nos. 1 to 9 were working continuously on contract basis since 2003, and that the applicant Nos. 10 to 18 had also been working since long, i.e., from 2004, 2005 etc., and that the latter were entitled to weightage of their experience. It was submitted that details of their initial engagement have already been submitted along with O.A. as Annexure A/1 (colly.)). It was further submitted that in similar circumstances, Hon'ble High Court of Delhi has, in W.P. (C) No.1641/2011 – **DSSSB** v. **Preeti Rathi & others**, granted reliefs to the age barred candidates, which judgment was followed by this Tribunal in O.A. No.159/2013, and the applicants being similarly situated, they are also entitled to identical reliefs, and no exception can be made in their cases. The objections in regard to limitation, and lack of cause of action, were denied, and it had been submitted that the applicants had approached this Tribunal at the right time, when they were not issued the admit cards.

10. Respondent No.2 filed its reply on 30.09.2015. In this, the DSSSB had explained the contents of the Advertisement and submitted that the list of eligible and ineligible candidates, who had applied under Post Code No.68/2010 for the post of Assistant Teacher (Nursery) (Female), had been uploaded on the website of DSSSB, and any candidate, who had objection about his/her rejection/ ineligibility, could have submitted his/her representation with documentary evidence on or before 22.08.2014 up to 5.00 PM. It was submitted that while five applicants of this O.A. had represented before the due date, i.e., Anita (applicant No.2), Sunita Mann (applicant No.7), Bhawna Devi (applicant No.6), Bhupinder Kaur (applicant No.4) and Sunita Devi (applicant No.8), and their representations were considered and rejected, five other applicants, namely, Promila Sejwal (applicant No.1), Anita (applicant No.3), Kiran Bala (applicant No.5), Sandhya Rai (applicant No.9) and Sunita (applicant No.10), had not so represented, and their candidature was, therefore, rejected as their being overage as on the closing date of application forms. However, as per the directions of this Tribunal, provisional e-admit cards had been issued to the following 8 applicants:

Sr. No.	Names of the candidates	Father's/ Husband Name	Category	DOB	Overage by	Applicant in OA
1.	Smt. Promila Sejwal	Sh. Satender Kumar	OBC	09.09.1973	01Y 10 M 21 D	Applicant No.1
2.	Smt. Anita	Sh. Ranvir Singh	UR	07.04.1965	13Y 03M 23D	Applicant No.2
3.	Smt. Anita	Sh. Virender Sharma	UR	07.04.1971	07Y 03M 23D	Applicant No.3
4.	Smt. Bhupinder Kaur	Sh. Baldev Singh	OBC	21.10.1965	09Y 09M 9D	Applicant No.4
5.	Smt. Bhawana Devi	Sh. Anil Kaushik	UR	17.05.1976	02Y 02M 13D	Applicant No.6
6.	Smt. Sunita Rani	Sh. Rakesh Mann	OBC	01.05.1971	04Y 02M 29D	Applicant No.7
7.	Smt. Sunita Devi	Sh. Khazan Singh	OBC	05.08.1968	06Y 11M 25D	Applicant No.8

8.	Smt. Sandhya Rai	Sh. Anurag Shankar	OBC	05.08.1968	00Y 08M 08D	Applicant No.9

11. It was admitted that the applications of two of the candidates, namely, Kiran Bala (applicant No.5) and Sunita (applicant No.10) had been wrongly rejected, as they were within the prescribed age limit, and that the applications of eight remaining applicants had already been accepted, and admit cards issued to them, i.e., Rajni Gautam (applicant No.11), Rashmi Sharma (applicant No.12), Shalini Sharma (applicant No.13), Farzana (applicant No.14), Meena (applicant No.15), Hemlata (applicant No.16), Rajinder Kaur (applicant No.17) and Vandana Gupta (applicant No.18).

12. It was admitted that the Lt. Governor, Delhi, had been pleased to grant one time relaxation in age to 347 contract teachers, who were engaged by the MCD, and that one time age relaxation had already been given to all those candidates, for the examination conducted on 31.08.2014. It was submitted that the candidatures of the applicants of this O.A. had been considered and rejected/accepted properly, and that the present O.A. deserves to be dismissed, as being devoid of any merit.

13. The applicants thereafter filed a 341 pages rejoinder to the counter reply filed on behalf of DSSSB, on 24.11.2015. Through this, it was submitted that applicant Nos. 1 to 9 had been engaged regularly on contract basis since the year 2003, and the applicant Nos. 10 to 18 did not suffer from age bar, and that they had also been working for long, i.e., 2005 onwards, and they were, therefore, entitled to weightage of their experience. Shelter had once again been sought behind the judgment of Hon'ble High Court of Delhi in **Preeti Rathi's** case (supra), followed by this Tribunal in O.A. No.159/2013 (supra), and it was prayed that the 18 applicants of this O.A. also being similarly situated, they are also entitled to identical reliefs. Further shelter had been sought behind the Hon'ble

Apex Court's judgment in the case of **Secretary, State of Karnataka & others** v. **Umadevi (3) & others** (2006) 4 SCC 1, and it was submitted that irregular appointments have to be distinguished from illegal appointments, and when age relaxation had been provided, adequate weightage for experience of contractual employees should also be provided.

14. It was, therefore, prayed that the applicants are not only entitled for declaration of their results, but are also entitled to be provided adequate weightage in the matter of selection. Any objection *qua* limitation and cause of action was denied and it was prayed that the O.A. be allowed.

15. It is seen that when on 29.08.2014 the Bench that day had, in view of the oral submissions made by learned counsel for applicants at the Bar, directed the respondents to allow the applicants to provisionally participate in the written examination scheduled to be held on 31.08.2014, three things had been made clear by the Bench, namely, (i) such participation of the applicants would not create any right or equity in their favour, (ii) participation in the examination would not lead to a presumption that they are held eligible for the posts in question; and (iii) if the oral submission made by the learned counsel for applicants at the Bar that the applicant Nos. 1 to 10 have been working on contract basis (continuously) since 2003 is found incorrect, a serious view will be taken in the matter.

16. Heard. Before we proceed with recording the arguments of both the sides, we may note here that the third condition, which had been put by the Bench on 29.08.2014 while allowing the applicants of the O.A. to provisionally appear at the written examination on 31.08.2014, has since been retracted by the learned counsel for applicants himself, by submitting that only the applicant Nos. 1 to 9 had been working on contract basis since 2003, as has been submitted twice in the rejoinders dated 17.08.2015 and 24.11.2015. Therefore, a serious view has to

be taken about the wrong submission made by learned counsel for applicants on 29.08.2014 before the Bench that day.

17. In his submissions, learned counsel for applicants had relied upon Annexure A-11 order dated 19.10.2015 passed by the Government of NCT of Delhi, in which it had been stated as follows:-

> "No.F.19(11)/2014/S-IV/1890-96 Dt.19/10/2015
>
> ORDER
>
> The Government of National Capital Territory of Delhi, has considered the issue of reputation of the Contractual employees working in various department of Govt. of N.C.T. of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015:-
>
> In line with the Uma Devi Judgment, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts:-
>
> 1. Every department should formulate a scheme to fill up all vacant posts.
>
> 2. Contractual employees working against these posts should be allowed to apply with following conditions:-
>
> a) They should be given age relaxation.
>
> b) They should be given appropriate and adequate weightage of experience for that post in evaluation.
>
> c) Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible 01.04.2013.
>
> It is therefore, requested that the necessary action with report to implementation of above decisions may be initiated may be initiated at the earliest.
>
> (Anupma Chakravorty)
> Dy. Secretary (Services)
> Dt.19/10/2015"

18. During his arguments, learned counsel for applicants had relied upon paragraph 53 of the judgment of the Hon'ble Apex Court in **Secretary, State of**

Karnataka & others v. **Umadevi (3) & others** (supra), which he read out, and which paragraph is as follows:-

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

19. Learned counsel for applicants had, thereafter, relied upon the judgment of Hon'ble Delhi High Court in **DSSSB** v. **Preeti Rathi & others** (supra) and, in particular, paragraphs 11 to 15 of that judgment, as follows:-

> "11. After hearing the counsels for the parties, we are of the view that impugned judgment rendered by the learned Tribunal does not call for any interference though we have our own reasons for arriving at the same conclusion and each of which reasons is independent and sufficient to sustain the order.
>
> 12. In the first instance, we may point out that as per the amended Recruitment Rules as also the advertisement issued by the petitioner, the age limit of 27 years is relaxable up to 45 years of age in respect of departmental candidates. The provision in this behalf stipulates as under:-
>
> > "Age Limit: 20-27 years (Relaxable in case of SC/ST/OBC/PH/Ex-Serviceman as per Government of India instructions issued from time to time). Relaxation in upper age limit available to:- SC/ST-05 years, OBC-03 years, PH & SC/ST-15 years and PH & OBC - 13 years, Departmental Candidates upto 45 years of age are eligible."

13. In the rules, nowhere the expression "departmental candidates" has been defined. It has to be, in these circumstances, assigned natural connotation. A departmental candidate would be the candidate who is not an outsider but is already working in the concerned department namely MCD in the instant case. Admittedly the respondents are working in MCD as Primary Teachers on contract basis and one has to assign practical meaning to the aforesaid terminology and we are of the considered opinion that the respondents shall be treated as departmental candidates for the purpose of appointment to the post of Primary Teachers on regular basis when they are already working in the same post on ad-hoc basis for the last ten years. Reference may be made to UPSC v. Dr. Jamuna Kurup (2008) 11 SCC 10 where the expression "employees of MCD" in the advertisement granting age relaxation with respect to recruitment to the post of Ayurvedic Vaids was held to include both permanent or temporary, regular or short term contractual or ad hoc employees of the MCD. Accordingly those appointed on contract basis were held to be employees of MCD and entitled to age relaxation. The earlier judgment in UPSC v Girish Jayanti Lal Vaghela (2006) 2 SCC 482 relating to Government employees was held to be not applicable to the expression "employees of MCD". We see no reason why the said dicta of the Supreme Court be not applied to the present situation also.

14. Even in those matters whether cases of ad-hoc/casual/contract employees come up for consideration for regular appointment, there has always been a practice of giving age relaxation. In many judgments rendered by the Apex Court as well as this Court such relaxation is provided and the relevant aspect which is to be kept in mind is that at the time of initial appointment on contract/casual basis the incumbent was within the age limit and was not overage. If that is so, to the extent of service rendered by such an employee, the benefit thereof has to be given. If the relaxation of almost 10 years is to be given to the respondents for having worked for this period, in that case also they would fall within the prescribed age limit.

15. There is yet another reason not to interfere with the impugned order. In the present case the respondents herein had filed an OA for declaration that they were entitled to be considered for the post of Primary Teachers. These teachers are to be appointed in MCD. MCD is the prospective employer which had sent its requisition to the petitioner herein namely Delhi Subordinate Services Selection Board (DSSSB). **After the judgment rendered by the Tribunal, MCD has not challenged, rather accepted the same. If MCD has no objection for consideration of the case of these respondents on merits for appointment on regular basis, we see no reason why the petitioner which is but a recruitment agency, should have any such objection."**

(Emphasis supplied).

20. He had further relied upon the Single Bench judgment of Hon'ble High Court of Delhi in **Govt. School Teachers Association (Migrants) Regd. & others** v. **Union of India & others** rendered on 18.05.2015 in W.P. (C) No.3989/2010 and had relied upon paragraphs 17 and 25 of the judgment in particular, which are reproduced hereinbelow:

> "17. Continuing with narrative, pertinently, in the counter affidavit filed on behalf of respondent no.1, while briefly adverting to various schemes that have been drawn up for the benefit of Kashmiri migrants, there is a reference to the reply of the concerned department to the report of the PSC. The relevant portion of the averments made in this behalf are extracted hereinbelow :-
>
> > "..MCD has granted extension to teachers upto 30.04.2010. For regularization of teachers, MCD will take action on the analogy of Govt. of NCT of Delhi. Govt. of NCT of Delhi has intimated that at present the Govt. of NCT is not in a position to regularize the services of Kashmiri migrant teachers in view of judgment dated 10.04.2006 of Hon'ble Supreme Court. The Hon'ble Court has clearly expressed itself against regularization of contractual employees."
>
> 17.1 The aforesaid extract would show that one of the impediments in the regularization of the petitioners articulated by the GNCTD is the judgment of the Supreme Court in State of Karnataka Vs. Uma Devi.
>
> 17.2 Despite, the aforesaid stand taken by the Department, in the minutes of meeting dated 04.12.2009, held under the aegis of the then Home Secretary, Government of India, the Principal Secretary (Education), in the GNCTD, evidently, conveyed that the cabinet had taken a decision to absorb contractual teachers against regular posts subject to the said persons clearing mandatory recruitment test, and that, having regard to their peculiar circumstances and length of service, they would be extended relaxation in age limit and given "more number of attempts". This aspect quite obviously did not attain fruition, which is why, the petitioners are before me.
>
> 17.2 Be that as it may, in so far as the DOE is concerned, it has principally taken the position that since the engagement of the petitioners was made on contractual basis without following any recruitment procedures, they would continue to be governed by their terms of employment. DOE has thus, taken the stand, that the petitioners, could not be absorbed against regular posts, and therefore, the principle of equal pay for equal work would not be applicable in their case. In other words, they would continue to be paid consolidated monthly emoluments.

17.3 The stand of the MCD is no different. It is averred in the counter affidavit that the petitioners like other contractual appointees cannot have a vested right to claim regularization, and that, their engagement would come to an end on the expiry of the contract tenure or the extended period stipulated therein.

17.4 In the rejoinder, the petitioner has not only reiterated its stand in the petition but has also rebutted the assertions made by the respondents.

18 -24 xxxxxxxxxxxxxx (Not reproduced here)

25. In these circumstances, can the petitioners be asked to discharge duties as teachers by GNCTD without being regularized and accorded parity in pay and allowances. In my view, it cannot be done for the following reasons :-

(i) The petitioners appointment took place pursuant to a decision taken by the Cabinet of the GNCTD at its meeting held on 02.04.1994. The decision being crucial is extracted hereinafter:

> "...The Council of Ministers considered the following subject and took decisions indicated against each:-
>
> Employment of Kashmir Migrants in the Education Deptt: It was pointed out that some of the migrants were trained teachers and their services should be utilized on contractual basis. It was further mentioned that the number of such trained teachers amongst the Kashmir migrants was comparatively small and there should be no difficulty in offering them employment on contract on a year to year basis.
>
> It was decided after brief discussion that one member from each migrant family may be appointed as teacher depending on his/her suitability for different categories of jobs. Such persons may be employed in the schools run by the Directorate of Education, MCD and NDMC. This benefit will be available only to the migrants presently living in camps run by the Government...." (emphasis is mine)

(i)(a) The decision taken on 02.04.1994 demonstrates that following factors were taken into consideration by the Cabinet:

(a) Availability of trained Kashmiri migrant teachers.

(b) Possibility of such teachers being utilized in schools run by DOE, MCD and NDMC.

(c) Appointments to be made as per suitability qua the job at hand.

(ii). The petitioners assertion that they were regularly appointed, albeit by using the device of a contractual employment when, regular posts were available, is an aspect which the respondents should have met, if at all, with appropriate facts and figures placed on record. There is no traverse or a pleading made in the affidavits filed on behalf of the respondents.

(iii). The misgiving that the GNCTD had that it could not regularize the appointment of the petitioners on account of the policy of the Ministry of Home Affairs, Union of India as they were required to be sent back, at some stage, was put to rest by the Special Secretary in the Ministry of Home Affairs in this letter dated 18/20.04.2000.

(iii)(a) In the very same letter, the Central Government emphasised the fact that pay parity should not be denied to the petitioners by GNCTD and other two local bodies i.e., NDMC/MCD only on the ground that they may have to return to the Valley, once, the situation normalizes.

(iv). The elapse of a vast period of time, and given the existing situation, of which, the court can take judicial notice, only supports the view that there is no likelihood of the petitioners being sent back to the Valley.

(v). The State being a model employer cannot ignore the principles of socialism which, intrinsically form part of our Constitution.

(vi). The argument that regularization could not be accorded to the petitioners in view of a judgment of the Supreme Court, in the facts of this case, misses several important aspects. The judgement of the Supreme Court in Uma Devi's case dealt with appointments made by State and its instrumentality without adhering to the established appointment procedure. The court frowned upon rules and regulations being side-stepped by engagement of personnel on daily wages or via contractual engagement, thereby depriving a large section of duly qualified persons, an opportunity to compete. The thrust of the judgement was to strike down all such appointments to posts sanctioned by the State which were illegal or irregular. The continued engagement of such personnel in the employment of the State and its instrumentalities with the assistance of court orders was categorized as "litigious employment", which the court ruled was against the constitutional

scheme, being violative of provisions of Article 14 and 16.

(vi)(a). The question, therefore, arises in each such case, where principles set forth in Uma Devi's case are sought to be applied, is: are the petitioners before the court employed "illegally" or "irregularly"?

(vi)(b) If the employment falls in the category of a irregular employment does it fall within the exception carved out in paragraph 53 at page 42 of the said judgement?

(vi)(c) Before I get to the point as to whether the employment of the petitioners is illegal or irregular apropos Uma Devi's case, there are two recent judgements of the Supreme Court, that I would like to advert to, which have squarely dealt with and distinguished the said judgement.

(vi)(c.1) The first judgement is titled: Nihal Singh & Ors. vs State of Punjab & Ors,. (2013) 14 SCC 65. This was a case where 27 petitioners approached the court for regularization; a relief, which was denied to them by the Division Bench of the Punjab & Haryana High Court.

(vi)(c.2) The facts obtaining in the case, broadly, were as follows. On account of large scale disturbance in the State of Punjab, in 1980s, in the wake of terrorism, the State, was unable to handle the law and order situation, with the available police personnel. The position was, particularly acute, vis-a-vis, provisioning of security to the banks located within the State of Punjab. In a high level meeting held by the State functionaries, which included the Governor, and the police personnel, the provisions of Section 17 of the Police Act, 1861, were taken recourse to, for engaging exservicemen as Special Police Officers (in short SPOs).

(vi)(c.3) Section 17 of the said Act, generally provides, that where police is unable to control an unlawful assembly, or a riot or disturbance of peace, with the force available with it, an officer, not below the rank of Inspector, has the power to apply to the nearest Magistrate to appoint any number of residents of the neighbourhood as police officers. These residents then act as SPOs, for such time as it is deemed necessary. The Magistrate is required to comply with such application, when made, unless he sees cause to the contrary.

(vi)(c.4) Based on the aforesaid provisions, the petitioners before the court were employed as SPOs, and they were paid, to begin with, an honorarium of Rs. 15 per day, which was enhanced to Rs. 30 per day. The SPOs, so appointed, functioned as guards for the banks, which paid their remuneration.

(vi)(c.5) The appellants before the Supreme Court, as also persons similarly placed, approached the High Court seeking directions for regularization of their services. The writ petitions were dismissed vide order dated 12.12.2001, directing consideration of the cases of the petitioners and other similarly placed, for regularization, in accordance with law.

(vi)(c.6) The SSP, Amritsar, vide order dated 23.04.2002, rejected the claims of the appellants before the Supreme Court. The burden of the order passed by the SSP, Amritsar, was that, wages were paid, to the SPOs by the banks; no seniority of the SPOs was maintained in Amritsar district; and therefore, if at all, the appellants could lay a claim, they could do so only with the bank authorities, as against, the police authorities.

(vi)(c.7) Consequently, a second round of writ petitions followed, which also met the same fate. The matter was carried to the Division Bench, which, while holding that there was a Master-Servant relationship between the SPOs and the State Government, refused to grant the relief of regularization sought by the petitioners on the ground that the very nature of their employment, was such, which did not warrant regularization. It was stressed that there was no regular cadre created for such posts, nor were there any, particular, number of posts created for this purpose.

(vi)(c.8) It is in these circumstances, that the matter reached the Supreme Court. The Supreme Court not only sustained the finding that SPOs were the employees of the State, i.e., the Police department, but also directed their regularization and in this process distilled the ratio of the judgement in Uma Devi's case. The observations made by the court, in the following paragraphs are apposite and closest, to my mind, to the facts obtaining in the instant case. For the sake of convenience, the same are extracted hereinbelow:

> "..... 18. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to

create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

19. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

20. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need.

21. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity

to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service.

A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over." (emphasis supplied) It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment.

22. It was further declared in Umadevi case that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby depriving vast number of other eligible candidates

> who were similarly situated to compete for such employment.
>
> 23. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.
>
> 24. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us.....
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> .....
>
> 30. It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.
>
> 31. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States....." (emphasis is mine)

(vi)(c.9) In the very same judgement, the Supreme Court also dealt with the other aspect of the matter, which is, whether in the absence of the sanctioned post,

could the State could be compelled to absorb persons, like the appellants before it. The court, in this context, noted that posts are required to be created by the State depending on the "need" to employ persons having regard to various functions that the State undertakes to discharge. The court observed, while the assessment of the need is within the domain of the executive of the day, subject to overall control of the legislature, the constitutional court is not bereft of its power to examine the accuracy of the "assessment" of the "need" so portrayed by the State. It held, in the facts of that case, that there was a need for creation of the post and the failure of the executive government to apply its mind as also to take a decision to create post or, in the alternative stop extracting work from the persons, i.e., the appellants before it, for decades together, would result in its inaction in the matter being treated as capricious and arbitrary.

(vi)(c.10) Accordingly, the court directed regularization of the services of the appellants before it, within a period of three months, with a direction, that they would be entitled to all benefits of service attached to the post which are similar in nature to those who were already in the cadre of the Police Services of the State. As a matter of fact, costs in the sum of Rs. 10,000/- was also directed to be paid to each of the appellants. The observation of the court, on this aspect of the matter, are contained in paragraphs 32 to 39 of the judgement. The same being relevant are extracted hereinbelow:

> "....32. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.
>
> "Every sovereign government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration."
>
> 33. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive government of the day subject to the overall control of the legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred.

34. This Court in S.S. Dhanoa v. Union of India, (1991) 3 SCC 567, did examine the correctness of the assessment made by the executive government. It was a case where Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument whether the need to have additional commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional commissioners in view of certain factors such as the reduction of the lower age limit of the voters etc. This Court categorically held that "27.... The truth of the matter as is apparent from the record is that .....there was no need for the said appointments.....".

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The

> result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.
>
> 37. We are of the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities
>
> 38. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.
>
> 39. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs.10,000/- to be paid to each of the appellants....." (emphasis is mine)

(vi)(d) This brings me to the second judgement of the Supreme Court in the case of Amarkant Rai vs State of Bihar & Ors., 2015 (3) SCALE 505. This was a case where the appellant before the Supreme Court had served as a "Night Guard" on daily wages, for 29 years. The appellant was appointed for the first time, albeit temporarily, as a Night Guard on daily basis vide order dated 04.06.1983, issued by the principal of the college affiliated to the Lalit Narayan Mithila University (in short the University).

(vi)(d.1) The University vide order dated 04.07.1985 took a decision to regularize in service all those persons who had worked for more than 240 days. It appears that the Addl. Commissioner-cum –Secretary passed a settlement order dated 11.07.1989; a copy of which was forwarded to the Vice-Chancellor of various Universities, wherein it was stated that services of employees working in educational institutions, as per staffing pattern, should be regularized, with a caveat, that new appointments should not be made. The principal of the concerned college vide order dated 07.10.1993 regularized the services of the appellant.

(vi)(d.2) The registrar, however, passed an order of termination on 01.03.2001. Consequent thereto, a writ petition was preferred by, similarly, placed daily wagers with the concerned High Court, upon the orders passed therein, the Registrar of the University, allowed all daily wagers, including the appellant, to resume their employment from 03.01.2002. The principal recommended the absorption of the appellant against two vacant posts vide letter dated 08.01.2002 and 12.07.2004.

(vi)(d.3) In pursuance of an order passed in another writ petition, the appellant was asked to appear before a three-member committee, constituted by the Vice-Chancellor for consideration of his case of regularization of service. The claim of the appellant was rejected on the ground it was not in consonance with the recruitment rule. The judgement of the Supreme Court in Uma Devi's case was relied upon in support of the conclusion reached.

(vi)(d.4) The appellant approached the High Court, once again, whereupon his writ petition was dismissed. The High Court observed that his appointment was in violation of Section 10(6) and Section 35 of the Bihar State Universities Act, 1976. The High Court sustained the order of the three-member committee. Aggrieved, the appellant preferred an appeal with the Division Bench, which met the same fate. This is how the matter reached the Supreme Court.

(vi)(d.5) The Supreme Court made the following crucial observations in paragraph 8, 9, 11, 12, 13, 15 & 16.

"..... 8. We have carefully considered the rival contentions and also perused the impugned order and material on record.

9. Insofar as contention of the respondent that the appointment of the appellant was made by the principal who is not a competent authority to make such appointment and is in violation of the Bihar State Universities Act and hence the appointment is illegal appointment, it is pertinent to note that the appointment of the appellant as Night Guard was done out of necessity and concern for the college. As noticed earlier, the Principal of the college vide letters dated 11.03.1988, 07.10.1993, 08.01.2002 and 12.07.2004 recommended the case of the appellant for regularization on the post of Night Guard and the University was thus well acquainted with the appointment of the appellant by the then principal even though Principal was not a competent authority to make such appointments and thus the appointment of the appellant and other employees was brought to the notice of the University in 1988. In spite of that, the

process for termination was initiated only in the year 2001 and the appellant was reinstated w.e.f. 3.01.2002 and was removed from services finally in the year 2007. As rightly contended by the learned counsel for the appellant, for a considerable time, University never raised the issue that the appointment of the appellant by the Principal is ultra vires the rules of BSU Act. Having regard to the various communications between the Principal and the University and also the education authorities and the facts of the case, in our view, the appointment of the appellant cannot be termed to be illegal, but it can only be termed as irregular.....

.....

11. As noticed earlier, the case of the appellant was referred to Three Members Committee and Three Members Committee rejected the claim of the appellant declaring that his appointment is not in consonance with the ratio of the decision laid down by this Court in Umadevi's case (supra). In Umadevi's case, even though this Court has held that the appointments made against temporary or ad-hoc are not to be regularized, in para 53 of the judgment, it provided that irregular appointment of duly qualified persons in duly sanctioned posts who have worked for 10 years or more can be considered on merits and steps to be taken one time measure to regularize them. In para 53, the Court observed as under:-

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 regularisation 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 regularise 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. We

> also clarify that regularisation, if any already made, but not sub-judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme." The objective behind the exception carved out in this case was prohibiting regularization of such appointments, appointed persons whose appointments is irregular but not illegal, ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years.

12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka & Ors. v. M.L. Kesari & Ors., (2010) 9 SCC 247, this Court held as under:

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

13. Applying the ratio of Uma Devi's case, this Court in Nihal Singh & Ors. v. State of Punjab & Ors., (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as

the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is-the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks."

.....

.....

15. Considering the facts and circumstances of the case that the appellant has served the University for more than 29 years on the post of Night Guard and that he has served the College on daily wages, in the interest of justice, the authorities are directed to regularize the services of the appellant retrospectively w.e.f. 03.01.2002 (the date on which he rejoined the post as per direction of Registrar).

16. The impugned order of the High Court in LPA No.1312 of 2012 dated 20.02.2013 is set aside and this appeal is allowed. The authorities are directed to notionally regularize the services of the appellant retrospectively w.e.f. 03.01.2002, or the date on which the post became vacant whichever is later and without monetary benefit for the above period. However, the appellant shall be entitled to monetary benefits from 01.01.2010. The period from 03.01.2002 shall be taken for continuity of service and pensionary benefits....." (emphasis is mine)

(vi)(e) The facts in the instant case, seen in the light of the judgement in the case of Nihal Singh and Amarkant

Rai, would show that the respondent's stand that the services of the petitioners were contractual and hence could not be regularized, is unsustainable.

(vi)(e.1) The reason for the same is that recruitment of the petitioners took place, in peculiar circumstances, due to mass exodus from the Kashmir Valley in the wake of terrorism in the State of Jammu & Kashmir. The respondents sought to engage the petitioners and other persons, similarly placed, on contractual basis, despite the fact that sanctioned posts were available in and around the same time. The petitioners have worked for nearly two decades at 1/3rd of the emoluments paid to regular/ permanently employed teachers. It is not as if the respondents do not "need" the teachers to work in their school. There is also, no case made out, by the respondents, that the petitioners are not qualified, and that, their selection was not made on merits and/or based on suitability. Having regard to these facts, I can only say that the circumstances obtaining in the petitioners' case, are no different from those that obtained in the Nihal Singh case.

(vi)(e.2) At best, the petitioners engagement could be, if at all, termed as irregular. Though I must state that the petitioners dispute this aspect of the matter. Even if they are termed as irregular, the respondents were required to act in accordance with paragraph 53 of the judgement of the Supreme Court in Uma Devi's case which required all those, who had worked for more than ten years, to be absorbed in employment. The respondents did neither and have instead continued to engage the petitioners on contractual basis, much to their detriment.

(vi)(e.3) In a recent judgment of this court dated 30.04.2015, passed in LPA No. 260/2015, titled: State Bank of India & Anr. vs Dharmendra Prasad Singh & Ors., the Division Bench was examining the policy of the State Bank of India, whereby it had absorbed personnel who were engaged on contractual basis, as Officer Marketing and Recovery (Rural), qua their gramin branches.

(vi)(e.4) The Single Judge, struck down the policy with the observation that the board of the SBI had brazenly breached the law declared by the Supreme Court in Uma Devi's case. A further direction was issued by the learned Single Judge, that the matter be placed before the secretaries in the Ministry of Finance and Law.

(vi)(e.5) The Division Bench, however, set aside the directions issued by the learned Single Judge, and while, doing so, made the following observations, even while it noted that in the impugned judgement the facts in issue had not been dealt with:

".....28. As noted above the appellant Bank had to experiment before sanctioning permanent posts of Officers Marketing and Recovery (Rural). The banking sector had to penetrate the rural market to give a fillip to the financial inclusion policy of the Government of India and to increase the level of business in agriculture and simultaneously recover the outstanding debts which otherwise would have been written off as non-performing assets. A fair and a transparent policy of recruitment by prescribing eligibility criteria was notified and the age limit was fixed. Public advertisements were issued inviting applications from all eligible candidates and all those who applied were subjected to the selection process. Those found meritorious were offered appointment on contract basis. They were trained and assigned jobs. Their work profiles were recorded. What started as an experiment in the year 2004 was appraised in the year 2009 and in the year 2010 a decision was taken that since the experiment had succeeded, it was time to crystallized the mother solution. Decision was taken to regularize the contractual employees but after subjecting them to a proper scrutiny. A bench mark of achieving 60% targets was fixed. A proforma was devised containing the evaluation matrix as advised by the concerned SBUs. The performance of the officers was evaluated on said matrix and only those who secured the bench mark were regularized. For that, permanent posts were sanctioned...."

(vi)(e.6) In somewhat similar case involving employment of Auxiliary Nurses Midwife, whose engagement was also on contractual basis, a Single Judge of the Rajasthan High Court in a batch of petitions, the lead petition being: S.B. Civil Writ petition No. 2329/2014, dated 28.07.2014, titled: Smt. Nisha Mathur & Ors. vs State of Rajasthan & Ors., directed their regularization with consequential benefits. Here again, in this case as well, the petitioners had been working on contractual basis, on continuous period, for periods exceeding ten years.

(vi)(e.7) Similarly, the Division Bench of the Himachal Pradesh High Court vide a judgement dated 09.12.2014, passed in a batch of petitions, the lead petition being: CWP No. 6916/2011, titled: Pankaj Kumar vs State of Himachal Pradesh, repelled the challenge made to the decision of the State to regularize the Gram Vidya Upasaks and Para Teachers. Here again, the appointments/ engagements were made subject to condition that the appointees will not seek regularization/ absorption. The fact that, in the meanwhile, teachers had worked for a decade or so, and had acquired the necessary qualification, the State decided to regularize the services of the petitioners as

> Gram Vidya Upasaks. The Division Bench, after examining the several precedents, held that the appointments could not be held as illegal, and thus, could be regularized as per the mandated policy of the State. 26. Therefore, having regard to the discussion above, the judgement of the Supreme Court in Uma Devi's case cannot come in the way of the petitioners' entitlement to claim regularization and for this very reason the petitioners claim for pay parity is legally valid. The petitioners, to my mind, without doubt are performing "equal work of equal value". Despite which, there is a deep disparity in the pay and emoluments of the petitioners in comparison to their counter parts holding regular posts."

21. On his part, learned counsel for respondent No.2 – DSSSB submitted that Lt. Governor's one time age relaxation did not cover the applicants of the present O.A., as it was valid only for the 347 contract teachers, whose list was annexed to that order, with the approval of Lt. Governor. He had submitted that the DSSSB had gone scrupulously by that list, and, therefore, the applicants herein could not have been granted age relaxation. He also submitted that the Recruitment Rules do not permit any weightage to be provided in respect of number of years of working on contract basis. He submitted that the policy decision in regard to the Recruitment Rules rests with the respective three Municipal Corporations, and not with the DSSSB, which is only a recruitment agency.

22. Learned counsel for South DMC – respondent No.3 submitted that this O.A. deserves to be rejected outright on the ground of mis-joinder of parties, as applicant Nos. 1 to 8 are before this Tribunal due to their being overage, while applicant Nos. 9 to 18 are not overage, as per the admission of their counsel himself, and, therefore, there has been a mis-joinder of parties, and even the M.A. No.2527/2014, for the 18 applicants for joining together in filing this O.A. was opposed by him.

23. He further opposed the O.A. being maintainable on the ground of delay in filing the O.A., since the cause of action had accrued to the applicants in the year

2010, while the O.A. had been filed on 25.08.2014. He further submitted that the judgment in the case of **DSSSB** v. **Preeti Rathi & others** (supra) could, at the most, be applicable to applicant Nos. 1 to 8, as it concerns only grant of age relaxation and could not be made applicable to applicant Nos. 9 to 18, and, therefore, it was wrong for all the applicants to rely upon the said judgment, and pleaded that the O.A. be dismissed on this ground alone. Learned counsel for respondent No.3 also submitted that the policy of the Govt. of NCT of Delhi announced vide order dated 19.10.2015 (Annexure A/11), relied upon by learned counsel for applicants, was not applicable to the case of the present applicants, as that policy did not cover the cases of the teachers.

24. On her part, learned counsel for East DMC – respondent No.5 submitted that the O.A. is hit by Rule 10 of CAT (Procedure) Rules, 1987, as plurality of reliefs has been sought in one O.A., since there two distinct reliefs in respect of applicant Nos. 1 to 8, and applicant Nos. 9 to 18, and, therefore, she prayed that O.A. is liable to be dismissed.

25. We have given our anxious consideration to the facts of the case.

26. In the case of **Govt. School Teachers Association (Migrants) Regd. & others** v. **Union of India & others** (supra) the applicants and their association had approached the Hon'ble Delhi High Court, who were all working on contractual basis as teachers, with much less salary than the salaries paid to the regularly and substantively employed teachers in those very schools. Those applicants were all migrants from the State of Jammu and Kashmir, and upon reaching Delhi, they had accepted whatever sustenance was offered to them by such contractual basis employments. In their case, since the Govt. of NCT of Delhi was, at that time, not in a position to regularize the services of Kashmiri Migrants, in view of the judgment of Hon'ble Apex Court in **Secretary, State of Karnataka & others** v. **Umadevi (3) & others**, the Hon'ble Delhi High Court

had held that those teachers could not be allowed to continue without being regularized, and also accorded parity in pay and allowances, and had issued directions through paragraph 29 of its judgment, that all those petitioners, who were continued to be so employed in the schools under the un-divided MCD, and Department of Education, and New Delhi Municipal Council, would be given emoluments and benefits, which are paid and extended to regular employees, falling in the regular category, i.e., Post Graduate Teachers (PGTs) and Trained Graduate Teachers (TGTs), and that their services will be regularized, and, for that purpose, necessary posts would be created within three months from the date of the judgment, and even in respect of those petitioners, who had been disengaged from employment in the meanwhile, and in respect of those, who had expired, it was directed that they shall be treated as regular employees and granted suitable benefits, as would have been given to permanent / regular employees.

27. In the case of **DSSSB** v. **Preeti Rathi & others** (supra), the issue concerned relaxation in age limit, and after noticing that for departmental candidates the age limit was relaxable, and further noting that the expression "departmental candidates" had nowhere been properly defined, it was held by the Hon'ble High Court that a departmental candidate would include a candidate, who is not an outsider, but is already working in the concerned Department, even if it be on contract basis, or *ad hoc* basis, for a substantial length of time. In saying so, the Hon'ble High Court of Delhi had relied upon the decision of Hon'ble Apex Court in the case of **Union Public Service Commission** v. **Dr. Jamuna Kurup** (2008) 11 SCC 10, where those employees of MCD, who had been appointed on contract basis, were held to be entitled to age relaxation, and the earlier judgment in the case of **UPSC** v. **Girish Jayanti Lal Vaghela** (2006) 2 SCC 482, relating to the government employees, was held to be applicable to the Governmental employees alone, and not to the employees of

Municipal Corporations. It was thereafter held that relaxation in age would have to be given for the period the respondents in that petition had worked on such contract / *ad hoc* basis, and that their age limit for the purpose of selection would be determined accordingly.

28. In making his submissions in the case, learned counsel for applicants had also relied upon paragraph 53 of the judgment of the Hon'ble Apex Court in **Secretary, State of Karnataka & others** v. **Umadevi (3) & others** (supra), in which it was stated that the question of regularization of irregular appointments may have to be considered on merits, in the light of the principles settled by the Apex Court, and that the services of such irregularly appointed persons, who had worked for ten years or more, in duly sanctioned posts, but without the cover of any Orders of Courts/Tribunals, should be considered for regularization. The learned counsel for applicants had emphasized that the import of this paragraph 53 of **Umadevi (3)** (supra) was that the contract employees also should be included among irregular appointees, which have been alluded to by the Hon'ble Apex Court.

29. However, we are unable to accept this interpretation. The contractual employees, who have been selected for such contract appointments, after some process of selection, cannot be called as included among the category of irregular appointees, where the irregularity, as different from illegality, would include surreptitious appointments made without any advertisement having been made in this behalf. Therefore, it is held that paragraph 53 of the **Umadevi (3)** judgment (supra) does not relate to contractual appointments.

29. Coming to the next point of objection raised by the respondents that the O.A. is not maintainable because the M.A. for joining together itself cannot be allowed since the prayer at paragraph 8 (i) in respect of the applicant Nos. 1 to 10 had been stated to be different, as they are seeking age relaxation, and the prayer

at paragraph 8 (ii) by the remaining applicants was in respect of their seeking weightage on the basis of experience in the matter of selections as Assistant Teachers, we find some merit in their submission, but are reluctant to decline to decide this case on merits because of such technicalities.

30. While the prayer at paragraph 8 (i) can be granted in respect of applicant Nos. 1 to 8 (wrongly pleaded as applicant Nos. 1 to 10 in the prayer portion of the O.A.), and later on limited during further pleadings in respect of applicant Nos. 1 to 9 and during arguments further limited in respect of applicant Nos. 1 to 8, based upon **Preeti Rathi** (supra), in the absence of any rule for providing weightage in respect of experience of teaching on contract basis, the prayer at paragraph 8 (ii) cannot certainly be granted at all.

31. It is also held and clarified that Annexure A/11 order issued by the Govt. of NCT of Delhi dated 19.10.2015, related to only those contractual employees, who were working in the various Secretariat/ Governmental Departments of Govt. of NCT of Delhi, against regular sanctioned posts, though on contract basis, in respect of whom the Apex Court in **Umadevi's** case (supra) was applicable. In those cases alone, the contractual employees working against those sanctioned regular posts in the Govt. of NCT of Delhi were allowed to be given both age relaxation, and appropriate and adequate weightage for experience for working against those sanctioned posts. But, even the judgments in the case of **Preeti Rathi** (supra), and in **Govt. School Teachers Association (Migrants) Regd. & others** v. **Union of India & others** (supra), did not relate to any weightage being accorded for working in contract capacity, and related only to the aspect of age relaxation for period of contractual employment at the time of undertaking process for selection as Assistant Teachers (Nursery).

32. Therefore, the O.A. is partially allowed, to the extent that prayer at paragraph 8 (i) is granted in respect of applicant Nos. 1 to 8, and the prayer at paragraph 8 (ii) is declined in respect of applicant Nos. 9 to 18. O.A. is, therefore, disposed of in the above terms. However, there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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