

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

**ORIGINAL APPLICATION No.733 of 2016**

**Date Of Decision: 19<sup>th</sup> September, 2018.**

**CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).  
HON'BLE SHRI. R.N.SINGH, MEMBER (J).**

1. Jyatinkumar Harjivan Solanki,  
(Son of Harjivan R. Solanki),  
date of birth: 16.02.1977,  
Age: 39 years 08 months,  
Working as : Lecturer in Chemistry,  
(Group A Post), under the Government  
College, Daman- 396 210 and  
residing at: Flat No. 201,  
1<sup>st</sup> Floor, Kalyan Apartment, Nani Daman,  
District Daman, State- Union Territory  
Of Daman & Diu- 396 210.
2. Dr.Sandhya Meriya,  
(daughter of Pritamdas Meriya),  
date of birth: 08.01.1974,  
Age: 42 years 09 months,  
Working as : Assistant Professor in Hindi,  
(Group A Post), under the Government  
College, Daman- 396 210  
and residing at: Plot No. 36,  
Matruchhaya, T.V. Center, Nanakvada, Valsad,  
District: Valsad, State: Gujarat-396 001.
3. Mrs. Purvi Gaurang Desai,  
(wife of Gaurang Ashwinbhai Desai),  
date of birth: 05.10.1975,  
Age: 41 years 1 months,  
Working as : Lecturer in Mathemetics,  
(Group A Post), under the Government  
College, Daman- 396 210  
and residing at: Flat No. 42,  
Koteshwar Nagar, Mograwadi, Valsad,  
District- Valsad, State-Gujarat,  
Pin Code- 396 001.
4. Ms. Reepal Amrutlal Tandel,  
(daughter of Amrutlal Gokaldas Tandel),  
date of birth: 08.01.1983,  
Age: 33 years 09 months,  
Working as : Lecturer in English,

(Group A Post), under the Government College, Kunta Road, Daman- 396 210 and residing at: B/201, 2<sup>nd</sup> Floor, Radha-Madhav, Near Gem Plaza, Dunetha, College Road, District-Daman, State: Daman, Pin Code- 396 210.

5. Chandrakant Chimانبhai Makwana,  
(Son of Chimانبhai G. Makwana),  
date of birth: 15.05.1974,  
Age: 42 years 05 months,  
Working as : Assistant Professor,  
(Group A Post), under the Government College, Daman- 396 210  
and residing at: Village-Sherpura, Post- Sherpura, Taluka- Gogamba, District- Panchmahal(Godhra), State: Gujarat, Pin Code- 389 341.
6. Nikunj Kumar Khandubhai Lad,  
(Son of Khandubhai Govindbhai Lad),  
date of birth: 05.02.1983,  
Age: 33 years 08 months,  
Working as : Lecturer in English,  
(Group A Post), under the Government College, Daman- 396 210  
and residing at: Flat No. 43, Sahyog Society, Opp. Nehar Colony, Thala- Chikhli, Taluka- Chikhli, District- Navsari, State: Gujarat, Pin Code- 396 521.
7. Vijaykumar Prakashbhai Patil,  
(Son of Prakashbhai Shriram Patil),  
date of birth: 08.02.1986,  
Age: 30 years 07 months,  
Working as : Assistant Professor in Botany,  
(Group A Post), under the Government College, Daman- 396 210 and residing at: Flat No. C-26, Rajanand Society, Laxmikant Ashram Road, Katargam, Surat City, Surat, District-Surat, Pin Code- 395 004.

...**Applicants.**

**(Applicant by Advocate Shri R G Walia)**

**Versus**

1. The Union of India,  
Through: The Administrator,  
Union Territory of Daman and Diu  
Secretariat Daman, Pin Code- 396 220.

2. The Secretary- Education,  
U.T. Administration of Daman & Diu,  
Secretariat Building, Fort, Daman (UT),  
Moti Daman, Pin Code- 396 220.
3. Director of Education,  
U.T. Administration of Daman & Diu,  
Directorate of Education,  
Secretariat Building, Daman,  
Fort,, Pin Code- 396 220.
4. Dy. Director of Education,  
U.T. Administration of Daman & Diu,  
Directorate of Education,  
Secretariat Building, Daman,  
Fort,, Pin Code- 396 220.
5. The Principal,  
Government College Daman,  
Office of Principal Government College  
Daman, Daman- Pin Code 396 210.
6. UPSC (Union Public Service Commission)  
Through- The Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi- 110 069.

**....Respondents.**

**(By Advocates Shri V S Masurkar for Respondent Nos. 1 to 5, Shri V B Joshi for Respondent No. 6 and Shri G.B. Kamdi for Interveners)**

**Reserved On : 25.07.2018.**

**Pronounced on: 19.09.2018**

**ORDER**

**PER:- R. VIJAYKUMAR, MEMBER (A).**

This application was filed on 26.10.2016 under Section 19 of the Administrative Tribunals Act, 1985 by Lecturers appointed on short-term contract basis, challenging the impugned advertisement

issued by the UPSC in Advertisement No. 18/2016 inviting applications for various posts including posts of Assistant Professors that were then occupied by applicants by virtue of their short-term contracts. They seek the following reliefs:

*"a) This Hon'ble Tribunal will be pleased to call for the records which led to the issuance of the impugned Advertisement No.18 of 2016 (i.e. Annx. "A1") and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same only to the extent of the (7) seven vacancies affecting the Applicants in respect of their claim for regularization.*

*b) This Hon'ble Tribunal will be pleased to order and direct the Respondents to regularize the Applicants in service as Professor/Lecturer/Assistant Professor in concerned subjects with effect from the date of their initial appointment with full consequential benefits of arrears of regular pay, Seniority, pay fixation etc.*

*c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.*

*d) Costs of the Original Application be provided for."*

2. During hearing held on 25.07.2018, it was mentioned that applicant Nos. 4 & 6 had already withdrawn their applications. The remaining applicants had joined on daily wage/short-term contract basis on 07.12.2001, 11.08.2004, 07.09.2006, 19.09.2007 & 06.09.2011 by following orders which convey their appointment on short-term contract basis as Lecturers with fixed consolidated monthly salary in their various subjects for the contractual period or until the UPSC nominees join in their respective subjects, whichever is earlier. They were also informed that this order would not bestow any right to them for regular appointment. At the time of the appointment, there were regular vacancies and Recruitment Rules had been formulated by notification No. 1/41/74-PER(3) dt. 10.02.1983 for recruitment of Group-A, Gazetted Posts of Principal and Lecturers in Government College, Daman and in respect of Lecturers, it was mentioned that there were 30 posts (from 1983 distributed among various subjects classified as Central

General Service Group-A, Gazetted, with age not exceeding 35 years and with the essential qualifications:-

"i) A consistently good academic record with at least First or High Second Class(B+ in the seven-point scale) at the Master's Degree (Subject to be indicated according to the requirement of the post at the time of each recruitment) of a recognised university or equivalent.

ii) An M.Phil Degree (Subject to be indicated according to the requirement of the post at the time of each recruitment) of a recognised University or equivalent.

OR

Published work indicating the capacity of candidate for independent research work.

Note I: Essential qualification i) would be relaxable to the required extent if research work of a candidate as evident from his thesis or published work is in the opinion of the Commission of a very high standard.

Note II: A candidate not fulfilling the requirement at (ii) is also eligible on the condition that he shall obtain the M.Phil degree or equivalent within 5 years of his appointment, failing which he shall not be entitled to earn future increments till he fulfils that requirement.

Note III: "B+" means 58% marks or more in MA/M.Sc examination. "Consistently good academic record" means average of 50% marks in the two examinations prior to M.A. ie. Pre-University/Higher Secondary PartII; Intermediate and B.A.

Desirable:

*Ability to teach through the medium of Hindi or Gujarati."*

3. The applicants have enclosed a sample advertisement[Annexure A-2] No. GC/EST/CONT-APPT/2001-02/347 dt. 01.06.2001 which, at that time, sought applications for the post of Lecturers on short-term contract basis in posts of seven Lecturers with the following qualifications:

"a) A consistently good academic record, with at least First or High Second class (55% marks or more at the Master's degree in the relevant subject of a recognised University or equivalent.

b) An M.Phil Degree in the relevant subject of a recognised university or published work indicating the capacity of candidate for independent research work.

Note: A Candidate not fulfilling the requirement at (b) is also eligible. The candidate who has qualified National Eligibility Test will be given preference."

4. The appointments followed thereafter with the sanction of Administrator of Daman & Diu and Dadra & Nagar Haveli. Subsequently, in the year 2012, the Ministry of HRD issued a Gazette Notification dt. 04.06.2012 for the 31 posts of Assistant Professor, Government College, Daman with similar

requirements except qualifications which were recorded as under:

"i) Good academic record as defined by the concerned University with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) at the master's degree level in a relevant subject from an Indian University, or an Equivalent degree from an accredited foreign University;

ii) Besides fulfilling the above qualification, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC, CSIR or similar test accredited by the UGC like SLET/SET;

iii) Notwithstanding anything contained in sub-clauses (i) and (ii) above candidate 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, 2000 shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions.

iv) NET/SLET/SET shall also not be required for such masters programs in disciplines for which NET/SLET/SET is not conducted.

v) A relaxation of 5% may be provided at the graduate and master's level for the Scheduled Castes/Scheduled Tribes/differently able (physically and visually differently able) categories for the purpose of legibility and for assessing good academic recording



during direct recruitment to teaching posting. The eligibility marks of 55% marks (or an equivalent in a point scale wherever grading system is followed and the relaxation of 5% to the categories mentioned above are permissible, based on only the qualifying marks without including any grace mark procedures.

vi) A relaxation of 5% may be provided, from 55% to 50% of the marks to the Ph.D degree holders, who have obtained their master degree prior to 19 September, 1991.

(The exact requirement of the subject/discipline will be indicated at the time of each recruitment.)

**Note:** Qualifications are relaxable at the discretion of the UPSC for reasons to be recorded in writing in the case of candidates otherwise well qualified.

**Desirable:**

Ability to teach through the medium of Hindi or Gujarati."

5. Both Gazette Notifications of 1983, in Column 12, and of 2012 in Column 14 require consultation with the UPSC while making direct recruitment in the manner below:

"Selection shall be made in consultation with the UPSC. Consultation with the Commission also necessary while amending/relaxing any of the provisions of these rules." (Column 12, Notification of 1983)

*"Consultation with Union Public Service Commission necessary while making direct recruitment."  
(Column 14, Notification of 2012)*

6. After the UPSC Advertisement was issued and the applicants approached this Tribunal, the matter was adjourned on the issue of interim relief which was finally granted on 20.09.2017 and this has continued till date.

7. The applicants have sought regularization of their services from initial date of appointment on the grounds that they had been appointed after a due selection process against duly sanctioned and regular posts which were very much in existence prior to the respective appointments of the applicants. They have also claimed that they had complied with all the eligibility criteria under the extant Recruitment Rules for the relevant posts. They have stated that they were paid a consolidated monthly pay which was substantially less than what is paid to regularly appointed Lecturers or Assistant Professors with the same job

profile and they were treated as regular employees for all practical purposes and were also made to do miscellaneous work without paying them any additional salary. They have emphasized that they had gone through a selection process for their appointments after the issue of an open advertisement. Further, they state that they have now become overaged and cannot seek employment elsewhere and therefore, non-regularization will cause them considerable harm. In support, they cite the decision of the Hon'ble Apex Court in the case of **Jacob M. Puthuparambil & Ors. Vs. Kerala Water Authority & Ors. [(1991) SSC (L&S) 25] in W.P.(Civil) No. 112 of 1990 decided on 19.09.1990** which had observed that since there was a vast labour market, employers were able to exploit job seekers through appointment as contract labour and therefore, it was necessary to consider their demand for regularization of service.

8. Respondents have opposed the joint application stating that the applicants are differently situated and appointed between

2001 & 2011 although on similar contract basis. None of them were recruited in accordance with the prevailing Recruitment Rules of 1983 and their appointment was simply on a stop-gap basis on short-term contract. Now, after publication of the revised Recruitment Rules in 2012, the UPSC has commenced selection as required in the Rules. Further, the appointment letters issued to applicants clearly specified that their appointment was temporary, subject to their replacement by UPSC nominees when they join in their respective subjects or until end of the contractual period, whichever is earlier. They also mention that the applicants had never made any representation for regularization in the past and it was only after the UPSC Advertisement was published on 08.10.2016 that the OA was filed on 28.10.2016. In this connection, they also mention that the applicants never availed any opportunity to improve their qualifications to accord with the Recruitment Rules.

9. In rejoinder, the applicants have

reiterated their allegation that they have been exploited for five to fifteen years prior to the OA and now were sought to be replaced by UPSC nominees which, they submit, is unfair. They rebut the claim of respondents that they have not made any representations and state that they had filed representations on 21.10.2016. They reiterate the other aspects stated in their OA.

**10.** The respondents have replied to the rejoinder where they reiterate that the posts held by the applicants are Group-A posts which have necessarily to be filled through the UPSC for the purpose of direct recruitment and none of the applicants have been selected or recommended by the UPSC. This position is consistent with the Recruitment Rules. On the claim of applicants that they had been promised regularization, they deny the claim and rely on the rulings of the Hon'ble Apex Court in the cases of ***Harminder Kaur & Ors Vs. UOI & Ors. [(2009) 13 SCC 90] in C.A. No. 3337-3361***

*of 2009 decided on 06.05.2009 and Surinder Prasad Tewari Vs. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad & Ors. in Appeal (civil) No. 3981 of 2006 decided on 08.09.2006.* They also cite the decision of this Bench of the Tribunal in **Maruti M. Lingavale & Anr. Vs. UOI & Ors. [2016(1) (CAT) SLJ(BOM) 75]** which stated that the exception in Para 53 of **Secretary, State Of Karnataka & Ors. vs Umadevi & Others [2006(3) SLJ(SC)] decided on 10.04.2006** would only apply if the following conditions were satisfied, as excerpted in that judgment as three conditions by reference to two conditions identified by the Hon'ble Apex Court in **State of Karnataka & Ors. Vs. M.L. Kesari & Ors. in [(2010) 9 SCC 247] dated 03.08.2010:**

*"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi(3), 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."

11. They also refer to the decision of the Hon'ble Apex Court in the case of **Nand Kumar Vs. State of Bihar & Ors. [(2014) 5 SCC 300]** in Civil Appeal NO. 2835/2014 decided on **25.02.2014** which holds that consequences of temporary appointment were within the knowledge of the appointees and they cannot invoke legitimate expectations for being confirmed in the post. They also rely on the

judgments of the Hon'ble Apex Court in **National Fertilizers Ltd. & Ors. Vs. Somvir Singh**[(2006) 5 SCC 493] in Appeal (civil) No. 6337 of 2003 decided on 12.05.2006; in **Madras Institue of Development Studies & Anr. Vs. K. Sivasubramaniyan & Ors.**[(2016) 1 SCC 454] in C.A. No.6465 OF 2015 decided on 20.08.2015; in **Pradeep Kumar Rai & Ors. Vs. Dinesh Kumar Pandey & Ors.**[(2015) 11 SCC 493] in C.A. No.6549 OF 2014 decided on 11.05.2015; and in **Ranjan Kumar & Ors. Vs. State of Bihar & Ors.**[(2014) 16 SCC 187], on petitioners who acquiesce by participation in the selection process and thereafter, challenge the adverse result, as not maintainable. They also refer to the decisions of the Hon'ble Apex Court in **Secretary to Govt., School Education Department, Chennai Vs. R. Govindaswamy & Ors.**[(2014) 4 SCC 769] in C.A. Nos. 2726-2729 of 2014 decided on 21.02.2014 and in **Union of India & Ors. Vs. G.R. Rama Krishna & Anr.** [(2013) 12SCC 582], in C.A. No. 7032/2013 decided on 23.08.2013, to hold that sympathy



and sentiment cannot be valid grounds for regularization of services in the absence of legal entitlement.

**12.** During the final hearing, learned counsel for applicants submitted that, of the five remaining applicants, after excluding applicant Nos. 4 & 6, who had withdrawn their applications, none of the applicants had applied against the UPSC examination on the basis that they were overaged in the case of applicant Nos. 1, 2, 3 & 5 while applicant No. 7 was not overaged but still did not apply. The learned counsel emphasized that it was harsh and unfair to deny regularization to the applicants when, in his view, they had been treated in an arbitrary manner and exploited while granting less pay than regular employees. He also mentioned that this was the first time that the UPSC had advertised for these posts in accordance with the Recruitment Rules while also admitting that the Recruitment Rules were not followed in the appointment of the applicants. However, he emphasized that the

Administrator had made the appointment and their appointments had not been challenged and they have been working ever since and therefore, when the Administrator had full powers under Article 239 of the Constitution, the applicants become entitled by virtue of the precedent in the decision of the Hon'ble High Court of Bombay in **Sachin Ambadas Dawale & Ors. Vs. The State of Maharashtra & Anr. [2014(2) Mh.L.J.36] in W.P. No. 2046/2010 decided on 19.10.2013.** He also refers to the cases of **Nihal Singh & Ors Vs. State of Punjab & Ors. [(2013) 14 Supreme Court Cases 65] in C.A. No. 1059 of 2005 decided on 07.08.2013** and the decision of the Hon'ble High Court of Delhi in **Army Welfare Education Society & Anr. Vs. Manju Nautiyal & Anr. in LPA 223/2015 with LPA 225, 227, 314, 347, 348, 353, 355 & 356 of 2015 decided on 29.10.2015.** Learned counsel also referred to the decision of the Hon'ble Apex Court in **H.C. Puttaswamy & Ors. Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors. in R.P. Nos. 378-84 of 1990 in SLP Nos.**

**3131-37 of 1988 reported in 1992 SCC (L&S) 53, decided on 05.11.1990** where a sympathetic view had been taken, citing precedent cases, despite the invalidity of the appointments.

**13.** Learned counsel for respondents submitted that the applicants had been admitted under Short-term Contract through an advertisement which made a specific limitation in regard to their appointment and their appointment orders emphasized that they will continue in their post until contract expiry or until a UPSC nominee joins. The expenditure for their salaries is non-plan and their appointments without doubt, is a stop-gap arrangement. He also urged that such advertisements for daily wages and short-term contracts do not invite serious attention from many potential and meritorious candidates because many of them could be looking out for regular jobs. He refers to the decision of the **Hon'ble CAT, Principal Bench in Uday Veer Singh Vs. Govt. of NCT of Delhi in OA No. 1227/2015 decided on 29.09.2015** in response to the citations. On

the powers of the Administrator, he referred to Articles 238 & 239 and submitted that the statutory processes had not been followed. Further, he urged that the applicants had never challenged the Recruitment Rules and therefore, their appointment and continuance had to be made strictly in accordance with the Recruitment Rules.

**14.** Learned counsel for applicant stated with reference to the Paras 2 & 27 of **Uday Veer (supra)**, that these made it inapplicable to the present applicants. He also claims the benefit of Para 53 of Umadevi especially considering the decision in **Sushil Flour Dal & Oil Mills Vs. Chief Commissioner & Ors. [(2000) 10 Supreme Court Cases 593] in C.A. Nos. 3439-40 of 1983, decided on 29.10.1996** and since the respondents did not conduct selection for several years. He asserted that the applicants were not back-door entrants.

**15.** We have gone through the O.A. along with Annexures A-1 to A-4, Rejoinder along with Annexure RJ-A1, Misc. Petition No.

830/2016 for Joint Petition, filed on behalf of the applicants.

**16.** We have also gone through the reply along with Annexures R-1 to R-3, filed on behalf of the respondents.

**17.** We have heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

**18.** Prior to considering the citations made by learned counsel for applicants in support of the quest for regularization by applicants, we may identify the validity of their claims in respect of their appointment and continuance. It is indeed true that at the time when applicants were appointed, there were specific sanctioned posts and for which Recruitment Rules had been notified as early as 1983. However, the advertisement inviting suitable candidates specifically cited the condition that the appointments were for daily wages or short-term contract basis. Further, the qualifications required

in the advertisement differed from the qualifications specified in the extant Recruitment Rules of 1983. A direct comparison of the essential qualifications reproduced above at Para 2 and in the advertisement at Para 3 shows that the Recruitment Rules required a minimum 58% marks in Masters' Degree whereas the advertisement was comfortable with 55% marks. Further, the qualification of M.Phil or published work was subject to the condition of obtaining the M.Phil Degree within five years was completely dropped in the advertisement. Further, the term 'consistently good academic record' was defined in the Recruitment Rules for the various stages of M.A. Pre- University and B.A., there was no such requirement in the advertisement. The advertisement also included the new qualification of National Eligibility Test as a preference but omitted the requirement of being able to teach through the medium of Hindi or Gujarati mentioned in the Recruitment Rules.

Therefore, the advertisement was not in conformity with the extant Recruitment Rules. The respondents have argued that in the case of advertisements for short-term appointments, several meritorious candidates who were only looking for regular jobs, will not apply. It cannot then be argued that the competition is truly open and invites all interested candidates for applying. The applicants have cited the decision of the Hon'ble High Court of Bombay in **Sachin Ambadas Dawale & Ors. Vs. The State of Maharashtra & Anr. (supra)**. Perusal of that case shows that the Government of Maharashtra had issued a Resolution dt. 25.07.2002 granting permission to fill a number of teaching posts in the Technical and Higher Technical Education Department on temporary contract basis. The Government also issued a Resolution dt. 02.08.2003 constituting a Selection Committee. Both these notifications placed a requirement that persons employed on contract will continue until candidates nominated by the Maharashtra

Public Service Commission were available. For about ten years, MPSC never conducted any selections and the Hon'ble Court found that the State Government issued a proper advertisement and conducted interviews by the duly formed Selection Committee. Further that the petitioners were qualified in accordance with the prevailing Recruitment Rules. Therefore, their appointment was held as neither illegal nor back-door and they were appointed in sanctioned posts. The Court accordingly directed regularization. In the present case, however, the advertisement cannot be considered as open and engendering full competition on par with the **Sachin Ambadas Dawale case(supra)** cited. It could be possible to argue by reference to the citation of the applicant of **Sushil Flour Dal & Oil Mills Vs. Chief Commissioner & Ors. (supra)** that the administrator was delegated with adequate power to form a Selection Committee in the absence of Recruitment by the UPSC for existing sanctioned posts. However, these persons were appointed under



this advertisement by virtue of their qualifications which were distinct from the Recruitment Rules and cannot be compared with similar persons that had become one of the bases for the view taken by the Hon'ble High Court in **Sachin Ambadas Dawale case(supra)**. Therefore, the factual elements which were available in **Sachin Ambadas Dawale case(supra)** differ markedly from the present case of the applicants and as observed at Para 43 in the orders of Hon'ble High Court of Bombay in WP No. 13968/2017 with WP No. 14191/2017 dt. 24.07.2018, "It is in light of these particular facts and circumstances that relief was granted to the petitioners in **Sachin Ambadas Dawale case(supra)**." The applicants have also cited the case of **Nihal Singh & Ors Vs. State of Punjab & Ors. [(2013) (supra)]** where the initial appointments had some statutory basis in the Police Act. As set out in the facts of the case, at the outset, these applicants have not spent decades on the job and have experience varying from five to fifteen years and

therefore, there can be no comparison with the ***Nihal Singh case(surpa)***.

19. The applicants have referred to the decision of the Hon'ble High Court of Delhi in ***LPA No. 223, etc., of 2015 in Army Welfare Education Society & Anr Vs. Respondents. (supra)*** where recognized private schools in Delhi were held(para 16) to be wrong in resorting to temporary, tenure or contractual appointments save and except where a vacancy was for limited duration. ...But where a vacancy exists it would be a fraud on the statute to resort to short term tenure appointment and that too endlessly. For this purpose however, the Hon'ble High court had referred to the various provisions of the Delhi School Education Act and Rules, 1973, which sets out the conditions of service of employees and protections thereof for qualified employees appointed on existing regular vacancies, which does not apply in the present case where employment had to be made in accordance with the extant Recruitment Rules and any stop-gap

arrangement could not become the basis for seeking regularization. It is in this context that the arguments of the respondents are relevant in that the applicants were holding Group-A posts which had necessarily to be filled up through UPSC and for which, the older Recruitment Rules framed in 1983 had been modified elaborately and notified in 2012 by the Ministry of HRD with markedly higher levels of qualifications different from the contents of the advertisement under which applicants were selected. It is also quite clear that the applicants had been appointed on temporary basis and their contracts had been systematically extended and this fact was well within the knowledge of applicants including the specific condition that they would be replaced by UPSC candidates when available. Further, as argued by respondents by reference to the decision of this Bench of the Tribunal in **Maruti M. Lingavale & Anr. Vs. UOI & Ors. (supra)**, the Para 53 of **Secretary, State Of Karnataka & Ors. vs Umadevi & Ors. (supra)**

requires compliance with three conditions as listed in Para 10 above. Only three of the applicants have completed 10 years by the date of advertisement but none of them went through a process of regular advertisement inviting open competition for regular posts nor did they have the qualifications as prescribed at that point in time for such regular vacancies.

20. Although the applicants have urged that they have become overaged for the selection process, it is also true that the law as settled by the Hon'ble Supreme Court in ***State of Himachal Pradesh Vs. Suresh Kumar & Anr.*** [1996 AIR 1565] dt. 24.01.1996, relaxation of age to the extent of the period of service of the applicant should be extended. Therefore, the years of experience of the applicants in service could be counted to determine their eligibility with reference to their actual dates of entry into service with the respondents. However, it is also necessary to note that the applicants in this case do not appear to have participated in

the selection process which would have enabled the respondents to grant them age relaxation by virtue of the settled law of the Hon'ble Supreme Court. For that matter, the applicant No. 7 was within the age limit and yet did not compete for reasons that have not formed part of the submissions and we may only presume that he was not properly qualified. The respondents have referred to the decisions of the Hon'ble Apex Court in **Secretary to Govt., School Education Department, Chennai Vs. R. Govindaswamy & Ors.(supra) and in Union of India & Ors. Vs. G.R. Rama Krishna & Anr.(supra)** to hold that sympathy and sentiment cannot be valid grounds for regularization of services in the absence of legal entitlement. This represents an evolution in the views of the Hon'ble Supreme Court which have been summarized in a variety of paragraphs in Umadevi(supra) by which the Hon'ble Court found that the provision of regularization had been construed as license by respondents in certain cases to appoint persons on casual

basis in an arbitrary and secretive manner that was anathema to the concept of public service employment and then managed to use the channel of regularization to obtain permanent appointment for the persons so irregularly appointed.

21. The citation of the applicant in **H.C. Puttaswamy (supra)** deals with highly qualified persons albeit invalidly appointed by respondents in that case and who had been in service for 10 years and some had even been promoted but further, that they had become ineligible for the benefit of age relaxation under the rules. The Hon'ble Apex Court records "16. The precedents apart, the circumstances of this case justify a humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy." Clearly, this order is only of particular relevance to those qualified petitioners and can only be considered to have been passed by an exercise of discretion available to the Hon'ble Apex Court under Article 142 of the Constitution. The base

conditions itself differ for the present applicants. Further, the decision in this case taken in 1990 has to be evaluated and relied upon only with reference to the law as settled by the Larger Bench in Umadevi(supra) and as taken forward in the decisions now cited by the respondents.

**22.** While noting that the Recruitment Rules of 1983 and 2012 have not been specifically challenged in this OA and further, that none of the surviving applicants have made any application against the impugned advertisement, there is no scope for relief from these aspects. On the aspect of regularization as claimed by the applicants, their case has been discussed elaborately above and has clearly no merits.

**23.** In the circumstances, the OA is dismissed without any order as to costs.

**(R.N. Singh)**  
**Member (J)**

**(R. Vijaykumar)**  
**Member (A)**

Ram.

