2021 INSC 209

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1007 OF 2021

UNIVERSITY OF DELHI …APPELLANT(S)

VERSUS

DELHI UNIVERSITY CONTRACT EMPLOYEES UNION & ORS. …RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1008 OF 2021

(Delhi University Contract Employees Union and anr. vs. University of Delhi and ors.)

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals arise out of the final judgment and order dated 22.11.2016 passed by the High Court of Delhi at New Delhi in LPA No. 989/2013. The appeal preferred by University of Delhi ("the University" for short) i.e. Civil Appeal No. 1007 of 2021 arising out of SLP(C) No. 17486 of 2017 is taken as the lead matter.

2. While allowing the Letters Patent Appeal preferred by the Delhi University Contract Employees' Union ("the Union" for short) & Others,

following conclusions were arrived at and directions were issued by the Division Bench of the High Court:-

> "Conclusion
>
> I. The decision of the University of Delhi to grant one time age exemption to all contract labour who may have served for over a year on such basis for participating in the selection in effect is in the nature of the Scheme postulated by the Supreme Court in para 53 of Umadevi. It cannot be denied that such opportunity to participate in the selection process has to be meaningful.
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> II. In view of the age relaxation given by the University of Delhi, an opportunity to undergo the selection process was made available to all contract employees who had worked for one year or more on contract. As a result of such opportunity, the contract workers were rendered entitled to be tested on a realistic and fair scale and benchmark. There is substance in the grievance of the contractual employees that to test them on the same standards as new applicants is to deprive them of a fair and meaningful opportunity to participate in the selection process.
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> III. The Delhi University admits that the contract employees who applied under the last recruitment drive i.e. 6th November, 2013 possessed the requisite qualifications as per the recruitment rules of 2008. Regular vacant posts were available when they were appointed. Therefore, so far as all those who applied are concerned, their qualifications stand verified. Furthermore, their original appointments could also, at the worst, be termed irregular and not illegal.
>
> IV. There is substance in the grievance of the appellants that pursuant to the notification dated 6th November, 2013, they have not been subjected to a test that is fair and appropriate for them. The respondent-University ought to have designed an appropriate mechanism for testing the appellants having regard to the date when they would have acquired their qualifications. Beside the appointment drive conducted by the respondent-University, they have regular post available for making appointments pursuant to a test

appropriately designed for the appellants and other persons based like them.

V. The appellants and others like them have served the organisation for long years, and, it is evident that even if their having acquired academic qualifications much before the new applicants, the deficiency, if any, is made good by the valuable experience acquired by them by virtue of the years of service. The learned Single Judge has fallen into error in treating the writ petition as one seeking a relief of regularisation.

VI. The respondents were unable to fill up the vacancies pursuant to the process initiated by the notification dated 6th November, 2013 which are still available.

VII. In view of the passage of time, it would be unfair to the appellants as well as the respondents to remand the matter for consideration of the above. This court is adequately empowered to mould the relief to ensure complete justice to the parties.

Result

102. In view thereof, this appeal is disposed of with a direction to the University of Delhi to design and hold an appropriate test for selection in terms of the notification dated 6th November, 2013 having regard to the fact that the persons working on contract basis covered under the notification dated 6th November, 2013 had obtained their essential qualifications much before the fresh applicants; that they have rendered satisfactory service and bring with them the benefit of the knowledge acquired by experience gained while working on contract basis with the Delhi University.

103. It is also clarified that the same persons who shall be so tested would be those who would be eligible pursuant to the advertisement dated 6th November, 2013.

The impugned order of the Single Judge dated 16th December, 2013 is modified to this extent and the appeal is disposed of with the above directions."

3. The relevant facts for the present purpose, in brief, are as under:-

A) By communication dated 31.08.1999 the University Grants Commission ("UGC", for short) imposed a ban on filling up of non-teaching posts in all institutes/universities and the affiliated colleges. The relevant part of the directions issued by the UGC were:-

> "(2)Ban on filling up of vacant posts.
>
> Every University/College shall undertake a review of all the posts, which are lying vacant in the Universities and in the affiliated Colleges and subordinate offices, etc., in consultation with the University Grants Commission. Financial Advisers will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Universities etc. are available. TILL THE REVIEW IS COMPLETED, NO VACANT POSTS SHALL BE FILLED UP EXCEPT WITH THE APPROVAL OF THE UNIVERSITY GRANTS COMMISSION."

These directions were reiterated by UGC in subsequent letters.

B) On 12.01.2011 the UGC sanctioned and allowed the University to fill up 255 posts of Junior Assistants while suggesting changes in Recruitment Rules of the University. Accordingly, Recruitment Rules (Non-Teaching Employees) 2008 were amended by the University and an advertisement was published on 06.11.2013 in the leading newspapers inviting applications for 255 posts of Junior Assistants in the University.

C) However, during the period from 2003 to 2013 various appointments were made by the University on contract basis as a result of which about 300 Junior Assistants are presently in the employment of the University on contract basis, most of whom are members of the Union.

D) Soon after the advertisement dated 06.11.2013, Writ Petition (C) No.7929 of 2013 was filed by the Union seeking following reliefs:-

> "(i) To direct the Respondents to formulate a scheme for regularising the services of members of the petitioner Union and other petitioners working on contract/ad hoc/daily wage basis after relaxing age requirement so as to confer on them permanent status;
>
> (ii) To direct Respondent no. 1 to pay salary to all the members of the petitioner Union and other petitioners at the rate of the minimum salary of the grade to which they have been appointed as is done by Respondent No. 1 in respect of Assistant Professors of the University/Colleges;
>
> (iii) To direct Respondent No. 1 to pay to all the members of the petitioner Union and other petitioners who have worked for six months or 240 days in each year of their employment with Respondent No. 1 on ad hoc/contract/daily wage basis non-productivity linked bonus retrospectively from the date(s) of their employment;
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> (iv) To direct Respondent No. 1 to fill up all vacancies in future as and when they arise within six months of occurrence to avoid any ad hoc/contractual arrangement in future;
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> (v) To direct Respondent No. 1 to grant maternity leave and other benefits to women employees; To allow this writ petition with costs; and
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> (vi) To pass any other appropriate order and/or direction

> which this Hon'ble court deems fit and proper in the interest of justice."

E) A Single Judge of the High Court by his order dated 16.12.2013 rejected said writ petition. Relying on the decision of this Court in ***Secretary, State of Karnataka & Ors. vs. Umadevi & Ors.***[1], it was observed:-

> "2. All the issues which have been urged in the present petition stand settled against the petitioners by the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1. The Supreme Court in the case of Umadevi (supra) has laid down the following ratio:-
>
> > "(I) The questions to be asked before regularization are:-
> >
> > (a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates.
> >
> > (b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.
> >
> > (II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc. is violated.
> >
> > (III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality (except possibly for equal pay for equal work) with regular employees who form a separate class. Such

1 (2006) 4 SCC 1

> temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.
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> (IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.
>
> (V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.
>
> (VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of ***Uma Devi***[1] is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.
>
> (VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution."

3. Para-4 of the judgment in the case of ***Umadevi***[1] specifically directs that Courts should desist from issuing orders preventing regular selection or recruitment at the instance of persons who are only adhoc/contractual/casual employees and who have not secured regular appointments as per procedure established. The Supreme Court has further observed that passing of orders preventing regular recruitment tends to defeat the very constitutional scheme of public employment and that powers under Article 226 of the Constitution of India therefore cannot be exercised for perpetuating illegalities, irregularities or improprieties or

for scuttling the whole scheme of public employment.

4. In the present case, it cannot be and could not be disputed that employment to be given pursuant to the posts which have been advertised by the advertisement dated 6.11.2013 is with respect to regular posts or permanent posts. Accordingly, in view of the ratio of the judgment in the case of *Umadevi*[1] , and more particularly para-4 thereof, this Court cannot interdict the regular selection process. I may note that the learned senior counsel for respondent no. 1 states that regular employment in the posts now advertised could not be given earlier because of a ban on regular recruitments imposed by UGC. Since that ban has been lifted, regular posts are now being advertised for being filled in. I may note that I take the statement on record made on behalf of respondent no. 1 that the University is going to give age relaxation to all candidates in its employment which would be the length of service which has been rendered by that employee in the employment of respondent no. 1-University while working on casual/adhoc/temporary status basis. This statement is made pursuant to the letter dated 5.12.2013 which is placed on record.

5. Learned counsel for the petitioner seeks to argue that respondent-University is appointing persons on contractual basis pursuant to the earlier advertisement dated 30.5.2013 and which should not be done in view of the ratio of the judgment of the Supreme Court in the case of *Umadevi*[1]. This argument is misconceived for various reasons. Firstly, *Umadevi's* case (supra) does not state that State is not bound to make permanent appointment. In fact, *Umadevi*[1] allows State and instrumentalities of State as per exigency of situation also to make contractual/casual/temporary appointments. In any case, this argument is also rejected for the reason that learned senior counsel on instruction states that posts advertised in terms of the advertisement dated 30.5.2013 in fact merge with the advertisement now issued on 6.11.2013 by requiring appointments to such posts only to be made as regular appointments and in permanent employment."

F) In the recruitment process pursuant to the advertisement dated

06.11.2013, the Junior Assistants employed on contractual basis, also participated. All contractual appointees were granted age relaxation. However, only 120 regular appointments could be made by the University out of which 10 were contractual appointees and members of the Union.

G) The Union, being aggrieved by the dismissal of its Writ Petition, filed LPA No.989/2013 before the Division Bench of the High Court. During the pendency of said Appeal, factual details pertaining to the members of the Union were placed on record, which show that the earliest contract employees were appointed in the year 2003 while the last appointees were of the year 2013. The details can be tabulated as under:-

Sl. No.	Year of appointment	No. of contract appointees
1	2003	12
2.	2004	7
3.	2005	19
4.	2006	37
5.	2007	36
6.	2008	19
7.	2009	33
8.	2010	14
9.	2011	12
10.	2012	1
11.	2013	2
	TOTAL	192

H) By its judgment and order dated 22.11.2016, the Division Bench of the High Court allowed the appeal to the extent indicated above and the University was directed to design and hold an appropriate test for selection in terms of Notification dated 06.11.2013.

I) Being aggrieved, the University filed the instant appeal. The Union also preferred an independent appeal i.e. Civil Appeal No.1008 of 2021 arising out of SLP(C)No.4906 of 2021. By its interim order dated 04.07.2017, the direction to hold special tests was stayed by this Court but it was directed that the contract employees would continue to work in the positions held by them on provisional basis until the next round of selections. The contract employees were however granted liberty to participate in any selection process held in future.

4. When these appeals came up before this Court on 22.10.2019, it was noted that even after the selection undertaken in the year 2013 there remained regular vacancies. The University was therefore directed to file an appropriate affidavit indicating the status.

In the affidavit dated 13.11.2019 the University indicated that 124 regular posts of Junior Assistants were then lying vacant.

5. In the affidavit dated 09.03.2021 filed on behalf of the University, it is

submitted that a decision has been taken that in order to facilitate the contractual employees to participate in the recruitment process, age relaxation as well as certain advantage for the service rendered as contract employees will be given by the University. Paragraphs 6 and 7 of said affidavit read are as under:-

> "6. In view of the order of this Court, to enable the contractual employees to participate in the recruitment process, a comprehensive age relaxation with respect to the upper age limit has been given to the contract employees working at the University in the present recruitment process.
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> 7. In addition to the above, a maximum of upto 10 extra marks, depending on the number of years of service of the contract employee, would be given to them while finalizing the merit."

6. Heard Mr. Santosh Kumar, learned Advocate for the University and Mr. Colin Gonsalves, learned Senior Advocate for the Union.

It was submitted by Mr. Santosh Kumar, learned Advocate that the directions issued by the Division Bench of the High Court were not consistent with the law declared by this Court in ***Umadevi***[1] and the subsequent decisions of this Court including that in ***Official Liquidator vs. Dayanand and Ors.***[2]. With regard to the ensuing selection to be undertaken where the benefits in terms of paragraphs 6 and 7 of the affidavit dated 09.03.2021 would be extended, it was submitted that the total marks in the test would be 300 and grant of 10 marks

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2 (2008) 10 SCC 1

would mean 3.33% advantage.

On the other hand, Mr. Gonsalves, learned Senior Advocate submitted that even after the decision of this Court in ***Umadevi***[1], this Court extended the benefit of regularization in certain cases. He relied upon the decisions of this Court in ***State of Karnataka and others vs. M.L. Kesari and others***[3]***; State of Gujarat and others vs. PWD Employees Union and others***[4]***; Nihal Singh and others vs. State of Punjab and others***[5]***; Sheo Narain Nagar and others vs. State of Uttar Pradesh and others***[6]; and ***Narendra Kumar Tiwari and others vs. State of Jharkhand and others***[7].

7. The decision of the Constitution Bench of this Court in ***Umadevi***[1] was pronounced on 10.04.2006 by which time, the earliest contract employees had put in only 3-4 years of service and most of the contract employees were engaged after the decision in ***Umadevi***[1].

In paragraphs 47, 49 and 53 of the decision in ***Umadevi***[1], this Court stated:-

> "47. <u>When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure</u>, he is aware

3 (2010) 9 SCC 247 [Paras 7 & 8]
4 (2013) 12 SCC 417 [Para 27]
5 (2013) 14 SCC 65
6 (2017) 14 SCALE 247 [Para 8] = (2018) 13 SCC 432
7 (2018) 8 SCC 238

of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

… … …

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

… … …

> 53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in ***S.V. Narayanappa***[8]***, R.N. Nanjundappa***[9] and ***B.N. Nagarajan***[10] 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 abovereferred 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." (Emphasis added)

8. The decision in ***Umadevi***[1] and other relevant decisions on the point were considered by a Bench of three Judges of this Court in ***Official Liquidator vs. Dayanand and others***[2]. In that case, the decisions of the Calcutta High Court and the Delhi High Court were under challenge. The Single Judge of the Calcutta High Court had directed absorption of Group 'C' staff, which direction

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8 AIR 1967 SC 1071
9 (1972) 1 SCC 409
10 (1979) 4 SCC 507

was affirmed by the Division Bench. Similarly, a Single Judge of the Delhi High Court had directed absorption of the writ petitioners in their appropriate scales with benefits such as fitment and promotions which directions were affirmed in appeal by the Division Bench. This Court accepted the challenge and set aside the directions issued by the Calcutta High Court and the Delhi High Court. During the course of its Judgment, this Court made following observations:-

> "52. … In this context, we may also mention that though the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. As a result of this, only mediocres must have responded to the advertisements and joined as company-paid staff. In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.
>
> [emphasis added]
>
> … … …
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> 75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *Umadevi*[1] is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for declining to entertain the claim of regularisation of service made by ad hoc/temporary/daily-wage/casual employees or for reversing the orders of the High Court granting relief to such employees — *Indian Drugs and Pharmaceuticals Ltd.* v. *Workmen*[11], *Gangadhar*

11 (2007) 1 SCC 408

> *Pillai* v. *Siemens Ltd.*[12], *Kendriya Vidyalaya Sangathan* v. *L.V. Subramanyeswara*[13], *Hindustan Aeronautics Ltd.* v. *Dan Bahadur Singh*[14]. However, in *U.P. SEB* v. *Pooran Chandra Pandey*[15] on which reliance has been placed by Shri Gupta, a two-Judge Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judge Bench in *Maneka Gandhi* v. *Union of India*[16]."

The Judgment of a Bench of two Judges of this Court in ***Pooran Chandra Pandey***[16] was then found to be inconsistent with the law laid down by this Court in ***Umadevi***[1]**.**

9. All the decisions relied upon by Mr. Colin Gonsalves, learned Senior Advocate were by Benches of two Judges of this Court and in each of those cases, the concerned employees had put in more than 10 years of service and could claim benefit in terms of paragraph 53 of the decision in ***Umadevi***[1]**.** In the last of those decisions i.e. in ***Narendra Kumar Tiwari***[7]**,** the submission was that the employees had not put in more than 10 years of service with the newly created State of Jharkhand and, therefore, there was no entitlement in terms of the decision in ***Umadevi***[1]. Relying on the concept of one-time measure elaborated in ***M.L. Kesari***[3], it was observed:-

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12 (2007) 1 SCC 533
13 (2007) 5 SCC 326
14 (2007) 6 SCC 207
15 (2007) 11 SCC 92
16 (1978) 1 SCC 248

"3. The appellants had contended before the High Court that the State of Jharkhand was created only on 15-11-2000 and therefore no one could have completed 10 years of service with the State of Jharkhand on the cut-off date of 10-4-2006. Therefore, no one could get the benefit of the Regularisation Rules which made the entire legislative exercise totally meaningless. The appellants had pointed out in the High Court that the State had issued Resolutions on 18-7-2009 and 19-7-2009 permitting the regularisation of some employees of the State, who had obviously not put in 10 years of service with the State. Consequently, it was submitted that the appellants were discriminated against for no fault of theirs and in an irrational manner.

... ...

6. The concept of a one-time measure was further explained in *Kesari*[3] in paras 9, 10 and 11 of the Report which read as follows: (SCC pp. 250-51, paras 9-11)

> *'9*. The term "one-time measure" has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi*[1] , each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.
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> *10*. At the end of six months from the date of decision in *Umadevi*[1], cases of several daily-wage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered

in terms of para 53 of the decision in *Umadevi*[1], will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of *Umadevi*[1] has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of *Umadevi*[1], but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi*[1], the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of *Umadevi*[1], are so considered.

11. The object behind the said direction in para 53 of *Umadevi*[1] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in *Umadevi*[1] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in *Umadevi*[1] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The

> fact that the employer has not undertaken such exercise of regularisation within six months of the decision in *Umadevi*[1] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in *Umadevi*[1] as a one-time measure.'

> **7.** The purpose and intent of the decision in *Umadevi* [1] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *Umadevi*[1] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *Umadevi*[1] and *Kesari*[3], sought to avoid.

10. The decision in ***Narendra Kumar Tiwari***[7] has to be understood in the backdrop of the facts of that case.

11. The contract employees in the present case cannot, therefore, claim the relief of regularization in terms of paragraph 53 of the decision in ***Umadevi***[1]. The rejection of their petition by the single Judge of the High Court was quite correct and there was no occasion for the Division Bench to interfere in the matter.

12. It is true that, as on the day when the judgment in ***Umadevi***[1] was delivered by this Court, the contract employees had put in just about 3 to 4 years of service. But, as of now, most of them have completed more than 10 years of service on contract basis. Though the benefit of regularization cannot be granted, a window of opportunity must be given to them to compete with the available talent through public advertisement. A separate and exclusive test meant only for the contract employees will not be an answer as that would confine the zone of consideration to contract employees themselves. The modality suggested by the University, on the other hand, will give them adequate chance and benefit to appear in the ensuing selection.

13. We, therefore, direct that all the concerned contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a

contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates.

14. We hasten to add that these directions are premised on two basic submissions advanced by Mr. Santosh Kumar, learned advocate for the University that;

(i) the total marks for the test will be 300 marks and thus the

maximum advantage which a contract employee will have is of 18 marks which in turn is relatable to advantage of 6% as against other participants in the selection process;

(ii) all the contract employees are otherwise entitled and eligible to participate in the selection process.

15. In our view, paragraphs 6 & 7 of the affidavit with the modifications as directed hereinabove will subserve the purpose. Such directions will not only afford chance to the contract employees to participate in the selection process regardless of their age but will also entitle them to some advantage over the other participants. Similarly, those contract employees who have put in more number of years as against the other contract employees, will also have a comparative advantage.

16. Lastly, it must be observed that according to Mr. Santosh Kumar, there are at present 300 Junior Assistants working on contract basis in the University while the number of posts advertised are only 236. Even if it be assumed that all these 236 posts are secured by the contract employees, that would still leave 64 of the contract employees as unsuccessful.

It may therefore possibly be said that as against the required posts of 236, the University had engaged contract employees in excess of the required number

or that there may be further advertisement to fill up the remaining posts.

We need not go into this issue and we rest content by saying that in any selections in future, one more chance and advantage in terms of this order shall be given to such unsuccessful contract employees.

17. With the aforesaid observations, these appeals stand disposed of. No costs.

…...……..J.
[UDAY UMESH LALIT]

..……..J.
[K. M. JOSEPH]

New Delhi
March 25, 2021.