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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA No.989/2013 & CM Nos.20764/2013, 10976/2014

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Date of decision : 22nd November, 2016

DELHI UNIVERSITY CONTRACT EMPLOYEES'

UNION AND ORS.

..... Appellants

Through: Mr. Sanjoy Ghose,
Mr. Rajiv Agarwal,
Ms. Nilam Tiwari,
Mr. Vikram and Mr. Sachin
Kumar, Advs.

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC
for R-1
Mr. Santosh Kr. Tripathi,
ASC for R-1 & 3

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE P.S. TEJI

JUDGMENT

GITA MITTAL, J

1. The appellants before us assail the judgment dated 16th December, 2013 passed by the learned Single Judge dismissing W.P.(C) No. 7929/2013 rejecting the appellant's prayer for the relief of quashing of the general selection process for appointment to the post of Junior Assistants to the respondent no.1 pursuant to

their advertisement Advt. No.Estab.IV/246/2013 dated 6th November, 2013.

2. The Delhi University Contract Employees Union had filed the writ petition contending that it was a Union of more than 200 employees, all citizens of India, who were working on contract basis in the post of Junior Assistant with the University of Delhi for the last several years and appointed between 1998 to 2013. Members of the petitioner union includes persons belonging to the unreserved category i.e. general category, as well as persons belonging to the reserved category of scheduled castes, scheduled tribes and those from the other backward classes.

3. The petitioner nos. 2 and 3 namely Sh. Vishal Joseph and Sh. Rakesh Sharma are two such members of the petitioner no.1 who have been so appointed as Junior Assistants and working in all departments and faculties of the University of Delhi.

4. The appellants have contended that unlike the appointment of civil servants and employees in the Government of India where Public Service Commission undertakes the entire exercise of selection and recommending appointment of employees, so far as the Delhi University is concerned, all necessary actions including the selection process is undertaken internally by the University without the intervention of any external agency.

5. The petitioner no.2 - Vishal Joseph, a citizen of India, holds a Masters Degree in Library Information Science who was appointed in April, 2003 as a Junior Assistant in the Department of Modern Indian Languages and Literary Studies after a written test;

a skill test in the nature of a computer test as well as an interview. He continues to work on contract basis in this very department even on the date of filing of the writ petition in December, 2013.

6. The petitioner no. 3 Rakesh Sharma, also a citizen of India, holds the degree of Master of Education who was appointed in October, 2002 on contract basis as a Junior Assistant in the Department of Physics and Astro-Physics after passing the written test and interview which position he continues to hold till the date of filing of the writ petition.

7. The University of Delhi was established and incorporated under the provisions of the Delhi University Act, 1922 and is required to function strictly in accordance with the provisions thereof as well as in compliance with the Statutes, Ordinances and Regulations framed in exercise of power conferred by the statutory provisions.

8. For discharge of the various functions in the University of Delhi, amongst others, 714 sanctioned posts of Junior Assistant cum Typist(Assistant); Caretakers and Stenographers which form part of Group-C stand created. In as much as the present case is concerned with appointment to the post of Junior Assistant, we shall confine our consideration to these posts only.

9. The appellants have asserted that out of the total of 714 posts, 512 have been lying vacant for the last several years and were not being filled up on regular basis for the last 12 to 15 years prior to the filing of the writ petition in December, 2013. Out of

the total posts in Group C, 301 posts belonged to Junior Assistant out of which 255 posts were lying vacant.

To substantiate this submission, our attention is drawn to an office order being Ref. No. Estab II(i)/2012/09 dated 2^{5th} July, 2013 whereby over 400 persons have been appointed as Junior Assistant on contract basis at a fixed remuneration of ₹13200/- per month with effect from 2nd July, 2013 till 31st December, 2013 against all vacant posts.

10. The members of the appellant no.1 were appointed on fixed tenure of six months at a time; their services terminated notionally for a cosmetic one day break to create the facade of the termination of the appointment immediately followed by fresh appointment letter issued for six months. This practice has been continuing for a period of over two decades.

11. Many members of the petitioner Union, were initially appointed on ad-hoc basis after written test and interview and were being paid full salaries and allowances payable to a newly re-appointed junior assistant. These very persons were subsequently appointed on contract basis for a fixed 'fee'. In this regard, the appellants have placed before us copies of letters dated 3/4th September, 2002 and 17th January, 2006.

12. It is an admitted position before us that the persons so appointed are holding the same qualification, if not better, than persons holding permanent posts of Junior Assistant. They are also performing the same functions.

13. It is also undisputed that all these persons have rendered satisfactory service.

14. The writ petition was filed for the reason that without framing any Scheme for making the appointments of the members of the appellant no.1 permanent, the respondent no.1 continued to appoint them on contract basis for a limited period of time at a meagre fixed 'fees'. Despite this violation of the rights of the appellants and its members, the respondent no.1 initially put up an advertisement dated 30th May, 2013 inviting applications for appointment of 60 persons as Junior Assistant on contract basis pursuant whereby the University selected 195 applicants for a skill test which was held on 26th October, 2013. Without announcing the final result, the respondent no.1 issued a fresh advertisement dated 6th November, 2013 inviting applications to 255 posts of Junior Assistant. The appellants have pointed out that the essential qualifications as well as the mode of selection was identical to the manner in which they were appointed and thus apprehended termination of their services in a clandestine manner on the basis of a clause in the appointment letter which enables the respondent no.1 to terminate their services "*anytime even earlier without notice or assigning any reason*" leading to the filing of the writ petition.

15. The notice inviting applications to the post of Junior Assistant dated 30th May, 2013 was followed by the notice informing the holding of the written examination communicating

the syllabus dated 6th August, 2013; notice communicating the examination centres dated 19th August, 2013; and notice dated 17th October, 2013 communicating the date and time of the skill test which were issued by the University of Delhi.

16. The learned Single Judge has dismissed the writ petition bearing W.P(C)No.7929/2013 vide impugned judgment dated 16th December, 2013 wherein it has been considered that “...*Petitioners also seek relief of their being regularized to their posts which they are holding, and which posts are contractual posts*”. To substantiate the dismissal, the learned Single Judge has placed reliance on **(2001) 4 SCC 1, Secretary, State of Karnataka v. Uma Devi** to hold “*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*”. Dismissing the writ, the learned Single Judge finally held in the impugned judgment that no relief, as was being prayed for by the petitioners, could have been granted.

17. We find that the learned Single Judge has considered the case from the perspective of only as if the appellants had sought a prayer for regularisation of their services. The rejection of the writ petition was primarily premised on the ratio of the pronouncement of the Constitution Bench of the Supreme Court reported at **(2006) 4 SCC 1 Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.**

18. The judgment of the Single Judge has been impugned inter alia on the ground that the learned Single Judge has erred in treating the writ petition as one seeking regularisation and that the prayers made in the writ petition have not been considered and that, given the action and order of the University of Delhi, the writ petition could not have been dismissed.

We examine the challenge laid by the appellants hereafter.

What was sought by way of WP (C) No.7929/2013 by the appellants?

19. Given the basis for the impugned judgment, we may firstly consider the prayer clause in the writ petition which was before the learned Single Judge. We extract hereunder the prayer clause in the writ petition which reads thus:

“(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;

(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;

(v) To direct Respondent No. 1 to grant maternity leave and other benefits to women employees;

To allow this writ petition with costs; and

(vi) To pass any other appropriate order and/or direction which this Hon'ble court deems fit and proper in the interest of justice."

It is apparent from the above that the writ petition did not seek regularisation in terms but sought a direction to the respondents to formulation of a scheme for the purpose. Counsels would submit that this is in terms of the decision in ***Uma Devi***. We shall consider this submission a little later in this judgment. But before, some essential facts.

Recruitment rules, Appointment of appellants

20. In order to take a view in the matter, it is necessary to undertake an examination as to the prescribed qualification for the post in question.

21. We first examine the qualification prescription for the post of "Junior Assistant" with which this case is concerned. The University of Delhi have placed on record the Recruitment Rules (Non-teaching) which were in vogue prior to 2008. So far as the

posts of “Junior Assistant” is concerned, the following qualifications are prescribed :-

“Designation : Junior Assistant (English)
&
Scale of Pay : Rs.3050-75-3950-804590
Qualifications: X Pass in Sr. Secondary School (10+2).
However, for Internal Candidates, the qualifications will remain as matriculation provided they have 5 years experience.”

22. So far as direct recruitment is concerned, the following procedure for recruitment has been notified :

“Procedure:(a) Conducting of Preliminary Test consisting of:

- | | |
|--------------------------|----------|
| (i) General Intelligence | 50 Marks |
| (ii) General Awareness | 50 Marks |
| (iii) General English | 50 Marks |
| (iv) Numerical Ability | 50 Marks |

Passing Marks in the PRELIMINARY TEST are:

- a) External candidates (General category) 45% in each component & 55% in aggregate.
- b) External candidate (reserve category) – 40% in each component & 50% in aggregate.
- c) Internal candidates (General category) – 40% in each component & 50% in aggregate.

d) Internal Candidates (Reserve category) – 35% in each component & 45% in aggregate.

(B) Those who qualify the said preliminary test will have to appear in the following tests: (No. of candidates called restricted to TEN TIMES the No. of vacancies).

i) Written Essay Test in English of 100 Marks & of one hour duration.

ii) Aptitude Test to be determined by the University at present it will consist of Typing Test @ 30 w.p.m.

iii) There will be no interview.

iv) The Panel as drawn on the basis of the performance in these tests, i.e., Aptitude Test & Essay Test.

The panel so drawn will continue to be operational for two years.

Promotion from Junior Assistant to Assistant under 25% promotional Quota:

The Committee has laid down the following procedure:

25% of the available vacancies will be filled up on the basis of the “FAST TRACK” method. Those who have completed three years of service will be eligible to take the test. They will be tested in the following:

i) Knowledge in Computer Operating (word processing, data analysis, packages).

ii) English

iii) Drafting & Noting

iv) *Knowledge of University Rules.*

Hence again, the total marks will be 200, i.e., 50 marks for each component mentioned above. The minimum qualifying marks will be 40%. As soon as the number of posts are filled on the basis of available vacancies from the Panel, the panel will get lapsed automatically. The test will be held every year / once in two years depending on the number of vacancies in any year; in case there is no vacancy in particular year, no test will be held.

(E.C. Reso. No.183 dated 13.11.1998)

Mode of recruitment: 50% of the posts to be filled in by open Advt. or the candidates sponsored by the Staff Selection Commission and remaining 50% by promotion from Group 'D' category Departmental candidates."

The University was thus effecting appointment to 25% of the available vacancies on the basis of what was termed as the "FAST TRACK" method from those who had completed three years of service and undertook a special test to be held either each year or once in two years depending on the number of vacancies in terms of the Executive Council Resolution No. 183 dated 13th November, 1998.

23. It is noteworthy that the above recruitment rules contained no stipulation of any age limit. The University of Delhi also notified online applications for the said positions and posts.

24. The petitioners were appointed between the period from 1993 to 2003 when these recruitment rules were in vogue. It is

admitted by the University of Delhi before us that the appellants who were appointed on ad-hoc basis or on contract basis possessed the requisite qualifications.

25. These Recruitment Rules came to be amended in the year 2008 for the 288 posts of Junior Assistant. So far as the educational and other qualification were concerned, it was prescribed as follows :

<p>7. <i>Educational and other qualification required for direct recruitment.</i></p>	<p><i>Essential: #</i></p> <ol style="list-style-type: none"> <i>1. A Senior Secondary School Certificate (+2) or its equivalent qualification from a recognized Board / University / Institution with at least 50% marks or a Graduate from a recognized University.</i> <i>2. Having a typing speed of 40 w.p.m. in English or 30 w.p.m. in Hindi Typewriting through computers.</i> <p><i>Desirable:</i></p> <ol style="list-style-type: none"> <i>1. Degree/Diploma in Computer Applications / Science and knowledge of operation of latest packages relating to Pay roll, Accounts, MIS etc.</i> <i>2. Diploma in Office Management and Secretarial Practice.</i> <p><i># Based on the requirement of posts, the University shall conduct its own recruitment test or alternatively seek nomination from the Staff Selection</i></p>
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	<p><i>Commission for each recruitment year. In case the University seeks nomination from SSC, the same qualification for similar posts prescribed by the Govt. of India shall apply.</i></p> <p><i>Note:</i></p> <p><i>1. The incumbent is expected to work under the close supervision of Section Officer or Assistant Registrar / Assistant Controller of Examinations. He should possess an aptitude for drafting/noting in English, office procedure. Data processing in a computerized environment and is expected to provide support services in one or more functions related to Educational Administration/ Examinations/General Administration/ House Keeping / Establishment/HR/ Legal /Purchase/Accounts & Finance/ Project management / Public Relations.</i></p> <p><i>2. All the candidates for direct recruitment will be required to appear in a written test to adjudge their ability of expression and knowledge relating to their work. The selection being based on the performance of the candidates in written test and interview.</i></p> <p><i>3. The scheme of the examination including weightage of marks for</i></p>
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	<i>written test and interview etc., as prescribed by the University from time to time with the approval of the Executive Council in this regard.</i>
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It is to be noted that so far as appointment from persons within the organisation is concerned, the recruitment rules prescribed merely a matriculation and 5 years experience. These rules also prescribed appointment of 25% through a limited departmental competitive examination.

26. It was also notified that the University “*shall conduct its own recruitment test or alternatively seek nomination from the Staff Selection Commission for each recruitment year*”.

27. These recruitment rules prescribed the age limit for direct recruitment as 27 years. 75% of the appointment to the post were to be filled by direct recruitment while 25% by a limited departmental examination from Matriculate Group-D employees working in the University with a limited period of 5 years regular service.

This is so far as the essential qualifications are concerned.

Number of posts and vacancy position

28. It is essential also to examine as to whether vacancies to regular posts were available when the appellants were appointed. It appears that the University of Delhi had made a proposal on 1st October, 2009 informing the University Grants Commission

("UGC") of the requirement of the capacity, advancement and additional requirement of non-teaching posts to provide OBC reservation as per the Central Educational Institutions (Reservation & Admission) Act, 2006. By a letter dated 12th January, 2011, the UGC granted approval for creation of additional 530 non-teaching posts. Out of these, 343 were against vacant positions out of which 2 were required to be filled up on outsource basis and 187 additional posts out of which 29 positions would be engaged on outsource basis. These posts included the non-teaching strength at all levels which included 237 and 13 posts of Junior Assistants. Thus, 187 additional posts had been permitted to be created.

The recruitment to the additional posts created is implicit in their very creation.

29. There is no dispute at all before us that as on the date when the appellant nos. 2 and 3 as well as the members of the appellant no.1 were appointed, vacant regular posts of Junior Assistants were available with the respondents.

Challenge to manner of appointment of the appellant nos. 2 & 3 and members of the appellant no.1

30. The respondent no.1 has submitted that the appointments on contract basis were made from time to time either on the basis of limited advertisements such as those displayed on the department's notice boards or even without issuance of any advertisement at all. It is at the same time also admitted that on some occasions, advertisements were put up on the University website. It has been submitted that as per recruitment rules, direct recruitment/open

selection shall be made only after making an open advertisement in leading newspapers and employment news at serial no. 6(v) of the mode of recruitment.

31. We find that again, sweeping assertions have been made without pointing out which of the appointments were so made. Inherent in the “*some*” is the admission that appointments were made after following open advertisement. On the contrary, the appellants have urged that all appointments were made after issuance of notices.

32. The record of the case bears out that the members of the appellant no. 1 and the private appellants had applied to the University of Delhi pursuant to notices inviting applications for the contractual employment or ad-hoc employment. The mode of inviting applications by pasting on notice boards or by newspapers was a matter which had been decided by the University of Delhi at the relevant stage.

33. In the instant case, the University of Delhi was offering appointment, albeit of fixed tenure. This appointment was being offered by the University of Delhi after advertisement and after the person concerned had undertaken the selection process conducted by the employer. The candidates also possess the qualifications as notified by the recruitment rules. It is also cannot be held, nor is it contended that the present case is a case where back door appointments were made without any advertisement and without any kind of selection process. The respondents do not say so.

34. The respondent no.1 is so hopelessly placed that it has made bald assertions without supporting record. The University is unable to inform us as to appointment of which of the petitioners were effected after putting of the advertisement on the University website and the employees being selected from the open selection process, and which were not.

35. The appellants have placed on record the notices as a sample copy dated 17th November, 2012 whereby the University of Delhi called applications for appointment to the post of Junior Assistant on contract basis for a period of six months on a consolidated pay-scale. In these notices, the required essential qualifications were those as prescribed in the recruitment rules which have been set out above. A communication dated 23rd September, 2005 issued by the University of Delhi notifying the candidate about the typing test for the post of Junior Assistant for engagement on contract basis has also been placed on record.

36. Before us, members of the appellant no.1-Union and appellant nos. 2 and 3 possessed qualification higher than the minimum prescribed; competed with other candidates and underwent the selection process which consisted of a written examination as well as interview.

37. What, therefore, is important i.e. that assignment of posts to the different departments was by the University of Delhi. Further, the notices inviting applications were also issued, not by Departments, but by the University itself. The appointment letters to the appellants and others so appointed were issued by the

University of Delhi. All salaries stand paid by the University of Delhi respondent no.1 alone. The shift from appointment on ad-hoc to contract basis as well as the continuation of the appellants on contract basis was also effected by the University of Delhi. The objection of the University to the appointments of the appellants premised on displaying the notices is, therefore, completely misplaced. No aspersions can be cast on the conduct of the appellants for such actions of the employer.

38. It is important to note that the mode of entry into service would be relevant if this court was considering a prayer for regularisation on behalf of the appellant nos. 2 and 3 and the members of the appellant no.1. It is not so before us. It is an admitted position that writ courts, and this court sitting in appeal over the adjudication by a writ court, would not have power to issue a writ of mandamus directing regularisation of service of contract employees or daily wagers. The appellants before us are pressing for a direction to the respondents only to consider formulating a Scheme whereby they could be considered for appointment taking into account the years of their experience in the light of their possessing the requisite eligibility qualifications as prescribed under the recruitment rules.

39. The further submission is that the contractual appointment of the appellants were made as per the exigency of the situation. It is submitted that these contractual appointments were for a fixed tenure of period on consolidated remuneration.

40. In this regard, some employment letters have been placed before us.

41. One such memorandum of appointment issued by the University of Delhi is dated 3/4th September, 2002 and refers to appointment “*on ad-hoc basis on Rs.3050/- p.m. plus usual allowances in the pay scale of Rs.3050-75-3950-80-4590 for a maximum period of 89 days only*”. The letter of appointment stated that the appointee “*will have no claim for regular appointment*”.

42. In addition, the appointee was required to depose on an affidavit. The draft of the affidavit included the following clause :-

“5. That I will have no claim with the University of Delhi for regularization of service against this or any other post.”

The letter of appointment required the employee to furnish the “*enclosed affidavit on a non-judicial stamp paper*”. It is submitted that all contractual appointees submitted such affidavits.

43. Before us, Mr. Sudhir Nandrajog, learned senior counsel as well as Mr. Santosh Kumar, Advocate on behalf of the University of Delhi have staunchly relied on the said stipulation in the letter of appointment as well as the above para 5 of the affidavit and submitted that the appellants are bound by their undertaking and have waived rights, if any, to regularisation.

44. The appointment letter which was issued mandated furnishing the “*enclosed affidavit*”. Thus, the person to whom the appointment was offered had no choice at all in the matter. The requirement of the affidavit was stipulated as also the format in

which the affidavit had to be submitted was also given. None of the appointees had any choice at all in the matter. Where is the voluntary choice of any condition of employment to an employee?

45. It needs no elaborate discussion that so far as employment is concerned, the youth, especially the educated youth as in the present case, without the remotest possibility of a fruitful engagement would reach out to any source of livelihood.

46. No difference could be pointed out on behalf of the University of Delhi to the process of recruitment which was undergone by these contractual recruits from that which is undergone by persons to whom regular appointment is offered under the rules. It is writ large on the face of the record that the members of the appellant no.1 and the appellant nos. 2 and 3 have actually undergone a procedure akin to that prescribed under the recruitment rules for regular appointment to the post of Junior Assistant, though they have been offered only the contractual appointment.

47. The respondents also contest the writ petition for the reason that there is no provision in the recruitment rules for regularization of contractual employees. Placing reliance on the pronouncement reported at *(1992) 4 SCC 33, Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava*, it is contended that such contractual appointment is an appointment which came to an end by efflux of time and created no right on the appointee to continue in the post and to claim regularization.

48. We may also set out the ratio of the judgment in *Umadevi case (supra)* which has been relied upon by the learned Single Judge as well and reads thus:-

“xxx 17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.”

49. So far as the notification of the tenure on the appointment letter is concerned and the respondent's contention that the employees accepted the same, we find that the said stipulation was not treated as sacrosanct by the University of Delhi for the reason that the authorities were aware that the appointment was being made against vacant permanent posts and that there was need for the services of the person concerned. For this reason, technical and cosmetic breaks of merely a single day were being given between extensions of the same appointment by a further tenure.

50. Such breaks were in vogue and a strategy adopted by employees including the state players and statutory authorities for decades to avoid claims of regularisation. We have a tradition of

“daily wagers”, “muster roll employees (even “temporary muster roll” and “regular muster roll” as was the practice in the New Delhi Municipal Council), adhoc employment and contractual employment. Several such engagements led to regularisation orders which have come to an end by the binding and authoritative Constitutional Bench pronouncement in *State of Karnataka v. Uma Devi*.

51. The factual matrix is thus in consonance with the law laid down by the Apex Court stating that a post must be duly created or sanctioned before it can be filled by in accordance with law. (Ref: (2007) 1 SCC 408 *Indian Drugs & Pharmaceuticals Ltd. v Workmen Indian Drugs & Pharmaceuticals Ltd.*; (2006) 8 SCC 67 *State of M.P. & Ors. v Yogesh Chandra Dubey & Ors.*)

Whether there was a ban imposed by the University Grants Commission for effecting regular appointments

52. Referring to a letter dated 31st August, 1999, issued by the University Grants Commission, it has been vehemently contended on behalf of the University of Delhi that no regular appointment could be made as there was a ban on such recruitment by the University Grants Commission. This communication referred to a memorandum issued by the Ministry of Finance requiring the implementation of inter alia the following as an austerity measure:

“(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.***

(Emphasis supplied)

53. It has been further submitted that in furtherance of the above, by a letter dated 17th November, 2001, the UGC had rejected the proposal of the University as contained in an advertisement no. 175 dated 10th August, 2001 for filling up non-teaching posts without the approval of the UGC.

54. The respondent no.1 has also placed on record a letter dated 24th December, 2003 from the UGC addressed to the Registrar, University of Delhi referring to a ban on the filling up of vacant non-teaching posts and that the matter was being referred to the Ministry of HRD for their decision. The respondent no.1 has referred to the UGC diktat that “*till the matter is resolved, vacant posts must not be filled up, otherwise the posts filled up by the University will be treated as unapproved and the expenditure of these posts will not be borne by the UGC*”.

55. In the same regard, the University of Delhi has also placed reliance on the pronouncement of the Supreme Court reported at **(2006) 5 SCC 493 National Fertilizers Ltd. & Ors. v. Somvir**

Singh wherein it had been held that if there was a ban against regular recruitment, ad-hoc appointees cannot seek regularisation.

56. In the same breath, it has been argued before us with some vehemence on behalf of the University of Delhi that if it did not make the appointments on contract basis, the University could not have functioned and the interest of the students and university would have suffered. This submission in fact clearly underlines the imperative need of the services of the appellants.

57. There are certain important aspects of the manner in which the respondents have proceeded in the matter so far as the ban against recruitment is concerned. If the above letters of the UGC are to be strictly read, the ban was absolute. It did not say that the respondents could affect recruitment of ad-hoc or contract employees. The communication states that the matter of appointment was being examined in the perspective of a "*financial austerity measure*".

58. On the contrary, the UGC and the university by their orders and actions manifest that the bar was never intended to be worked qua the university. Such ban was certainly never implemented or worked as the manifested in the present case.

59. We find that instead by the letter dated 12th January, 2011, the University Grants Commission has in fact approved 237 additional posts of junior assistants. Therefore, so far as the non-teaching posts are concerned, clearly these additional posts were obviously approved because the UGC had identified need of the Delhi University for so many employees. Where would there be

identification and creation of posts unless appointments thereto could be effected? It is to be noted that this letter dated 12th January, 2011 does not refer to any ban against recruitment.

60. The ban was as a measure of financial austerity, it would prohibit absolute recruitment including temporary or ad hoc or contractual recruitment as well.

61. Pursuant to successful participation in the selection process, the appellants have placed as samples, the copies of the appointment letters dated 3/4th September, 2002 and 17th January, 2006 issued by the University of Delhi. It is undisputed that the letters of appointment have not been issued by any department or any authority subordinate to the University of Delhi but by the Delhi University itself.

62. Also on record is communications dated 13th May, 2013 revising the rates of the consolidated fees paid to the contractual employees. Clearly, even though notified, no such ban was implemented either by the University or enforced by the University Grants Commission.

63. Further the University of Delhi has never intimated the employees including the petitioners who were being appointed of any ban against their recruitment. It was the University of Delhi which initiated the process of appointment, issued notifications inviting applications, notifying the essential qualifications. The University implemented the entire selection process.

64. The pronouncement of the Supreme Court in *National Fertilizer Limited v. Somvir Singh* therefore, would clearly have no application to the facts of the present case.

65. It is also noteworthy that the employees so appointed including the appellant nos. 2 and 3 and members of the appellant no.1 have thus received the payment at which they were appointed and upwardly revised. Clearly, the UGC has funded these payments by the Delhi University to the appellants without any objection or demur. The posts were duly sanctioned and in existence and the appointments were against vacancies to such required posts. Therefore, the appointments of the appellants also did not entail any additional financial liability which had not been anticipated or provided for. The University's yearly budgets would have provided for the same.

66. It is not the case of the University that the appellants were not paid monies which were advanced to the University by the University Grants Commission. In fact, the University Grants Commission has paid such amounts for well over a decade in as much as some of the members of the appellant no.1 have been appointed since 1993. Clearly, the appointment of the appellants to posts which were sanctioned under the recruitment rules, as approved by the University Grants Commission was not being treated as appointments to posts which stood banned by the University Grants Commission itself.

Objection that some of the persons appointed on contract basis were related to other employees of the University

67. It is also contended that some of the contract employees were related to other employees of the Delhi University. Merely because an applicant for a post is related to an existing employee of the organisation, cannot *ipso facto* be a ground for disqualification for his/her appointment. Relationship *per se* would not render such candidate as unmeritorious, unless there is evidence that the appointment was of a person not qualified or effected as a backdoor entry.

68. If the organisation was effecting employment of only relatives of existing employees, then criticism on the ground that favouritism in effecting appointments also could be levelled. It is not so contended before us in the instant case.

69. We also find that the University has made general and sweeping assertions without any specification before us. Such sweeping assertions cannot be relied on. Most importantly, the University of Delhi has not been able to point out a single instance of a person, even a relative, who did possess the qualifications, as per the requirement, rules or did not deserve to be appointed. The University is unable to point out a single person who has not undergone the qualifying test or the skill test or interview. We also note that the respondents have no complaint that any of these persons are not rendering satisfactory service. No criticism ever or a memo issued for inefficiency is available on the record placed before us.

Implementing reservation policy

70. It has been submitted by Mr. Santosh Kumar, learned counsel for the respondents that the proper reservation policy which mandates appointment of scheduled castes, scheduled tribes and OBC candidates has not been effected and that the roster as per the pronouncement in the Supreme Court in ***R.K. Sabharwal & Ors. v. State of Punjab & Ors. (1995) 2 SCR 745*** has not been implemented in appointing the junior assistants on contract basis.

71. It has been submitted by Mr. Sanjoy Ghose and Mr. Rajiv Aggarwal, learned counsels for the appellants before us that the contractual employees are from all categories and include persons from the general category as well as the scheduled castes, scheduled tribes and OBC categories and that the reservation can be implemented.

72. We have repeatedly put to the respondent no.1 to inform this court as to the number of the contractual employees and the distribution of the contractual employees in terms of the above categorisation. No such information has been supplied to us till we reserved judgment.

Certainly, the directions of the Supreme Court and the reservation policy must be given effect to without any exception.

Directive of the Ministry of Human Resource Development dated 1st April, 2014

73. During the course of arguments, Mr. Sudhir Nandrajog, learned senior counsel has submitted that as late as on 1st April,

2014, the Ministry of Human Resource Development had directed that the ratio laid down by the Supreme Court in *Uma Devi (supra)* has to be strictly followed. This letter refers to an order dated 16th December, 2016 of this court regarding the case of one *Ashok Kumar v. The Vice Chancellor, Rashtriya Sanskrit Sansthan & Anr.* This letter without anything more makes an incoherent reading and in any case relates to the case of *Ashok Kumar* in particular only. But it cannot be denied that the law laid down by the Supreme Court has to be strictly applied.

Reference to Umadevi

74. We now propose to discuss the directions of the Supreme Court in the pronouncement reported at *(2006) 4 SCC 1 Secretary, State of Karnataka & Ors. v. Umadevi(3) & Ors.*

In this case, the Supreme Court was concerned with a challenge to matters of absorption, regularisation of permanent continuance of temporary, contractual, casual, daily wage or ad-hoc employees appointed/recruited and continued for long in public employment *dehors* the constitutional scheme of public employment.

75. The judgment of the Constitution Bench of the Supreme Court was rendered on 10th April, 2006. The court noted the reference which was placed before the Constitution Bench in paras 10, 12, 45, 46 and 55. In para 52, the court has declared that no writ of mandamus should be issued in favour of employees

notifying the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the state has a legal duty to make them permanent. Both sides have drawn our attention to the following observations in para 53 of the pronouncement :

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071] , *R.N. Nanjundappa* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] 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 supplied)

76. Mr. Santosh Kumar has further relied on the pronouncement of the Supreme Court reported at ***(2008) 10 SCC 1 Official Liquidator v. Dayanand & Ors.*** wherein reliance was placed on the Constitution Bench pronouncement in ***Umadevi***. This judgment was rendered in the context of a challenge laid to orders of Kolkata and Delhi High Court issuing directions to the appellant to absorb persons employed by the Official Liquidator attached to those High Courts under Rule 308 of the Companies (Court) Rules, 1959 against posts sanctioned by the Government of India, Department of Company Affairs. Reference has been made in para 52 of this pronouncement to the fact situation that the Official Liquidator had issued advertisements for appointing company paid staff and undertaken some sort of selection. The court had observed that more qualified and meritorious persons must have shunned applying because they knew the employment would be temporary and only mediocre applicants must have responded to the advertisements and joined as company paid staff. It was in this background that the absorption of the company paid staff was treated as violative of the doctrine of equity as enshrined in Article 14 and 16 of the Constitution.

77. These observations may not have any application in the present case as the notices were issued (some even on the University website) notifying minimum essential qualifications which were the same as those prescribed under the extant Recruitment Rules.

78. All persons were subjected to a written examination as well as a skill test and underwent the complete procedure as mandated under the recruitment rules. Furthermore, the respondents did not adhere to the tenure and continued with the employment. Other than a bald assertion, there is no exigency of service for the contractual employment or explanation for the same at all rendered before us. The respondents have not only manifested the need for the services of the employee, but we find that there has been expansion of the total number of sanctioned posts of Junior Assistants. Such selection does not appear to have been undertaken in the *Official Liquidator's* case.

79. We further find that in the *Official Liquidator's case*, the Government of India itself had framed a Scheme in 1978 as well as the 1999 Scheme for absorption of the company paid staff which was duly implemented. Several employees stood regularised under the 1999 scheme as well.

80. It is urged with some vehemence by Mr. Santosh Kumar, learned counsel that, even though there were sanctioned posts with vacancies, no scheme for regularisation of the contract labour even though qualified, could be made for the Delhi University for the

reasons of the ban of employment imposed by the University Grants Commission in the present case.

81. It is further submitted that even if the ban was not in operation, none of the persons working as contract labour had completed 10 years of service. The submission is that the period of 10 years of service referred to in para 53 in *State of Karnataka v. Umadevi* means 10 years service as on the date of the judgment. It is submitted by Mr. Santosh Kumar that in order to avail the benefit of the scheme postulated by the court in *Umadevi*, the employees should have completed 10 years service as on the date of the judgment i.e. 10th April, 2006 i.e. the date on which the judgment was rendered. In support of this plea, reliance is placed on the pronouncement reported at (2010) 9 SCC 247 *State of Karnataka & Ors. v. M.L. Kesari & Ors.* and *Rajender Prasad v. NHRC (2013) 136 DRJ 421 (DB)*. Per contra, it is pointed out by Mr. Rajiv Aggarwal, learned counsel for the appellants that these judgments related to employees who had been appointed before the judgment was rendered.

82. We find that this submission fails to consider the important fact that the University of Delhi continued to make contractual employment despite the pronouncement in *Umadevi*.

83. It is noteworthy that the decision in *State of Karnataka v Umadevi* was rendered on 10th April, 2006 wherein the 10 year window was given by the court. The respondents have not only effected appointments on contract labour after 10th April, 2006 but

have also appointed/extended appointment of persons who had been appointed on contract basis after 10th April, 2006 when the decision was rendered.

84. This submission of the Delhi University, in any case, does not need to detain us in view of the actions of the Delhi University as noted hereafter. We have noted above the advertisement issued by the respondent no.1 as late as in May, 2013 and the several steps taken towards conducting the examination and the selection pursuant to the advertisement.

Submission on behalf of the University premised on the Doctrine of election

85. It is submitted by Mr. Santosh Kumar, learned counsel for the University of Delhi that the University of Delhi had issued a notification dated 6th November, 2013 inviting applications for appointment to 255 posts of Junior Assistants on regular basis. We further find that the University had taken care of the persons who were working on contract basis in as much as a decision was taken by the *Executive Council* vide its *Resolution No. 102* in the meeting held on *29th October, 2008* which was publicised by the *notification dated 5th December, 2013* and reads as follows :-

“2. Clause (i) and (ii) of Rule 6 of the said Recruitment Rules **prescribe an upper age limit for direct recruits** in the Schedule and certain relaxation in age for departmental candidates.

3. It is hereby notified that in terms of **Rule 9 of the Recruitment Rules (Non-Teaching Employees) 2008**, the maximum age limit will be relaxed to the extent of service rendered by them in respect of person who are already working on contract/daily wages/adhoc basis in the University/Colleges one time exemption provided they have put atleast one year of service. This exemption shall cease to be in operation with effect from 31.03.2014.”

(Emphasis by us)

86. It is submitted that as a result, the University had been extremely liberal while giving the age relaxation even to employees who had put barely one year of service and that exemption ceased to be operative with effect from 31st March, 2014.

87. Learned counsel would contend that the prayer made in the writ petition and the present appeal is barred by application of the doctrine of election and that the respondents are prohibited from any relief in their writ petition on account of having participated in the selection pursuant to the notification dated 5th December, 2013.

88. In this regard, reliance has been placed by Mr. Santosh Kumar on the pronouncement of the Supreme Court reported at **(2010) 4 SCC 753 Karam Kapahi & Ors v. Lal Chand Public Charitable Trust & Anr.** wherein it was observed thus :

“52. The principle of election has been very felicitously expressed in the treatise Equity—A Course of Lectures by F.W. Maitland, Cambridge

University, 1947. The learned author has explained the principle thus:

“The doctrine of election may be thus stated: That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it....”

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57. Therefore, the common law doctrine of election is a part of our jurisprudence and squarely applies in this case inasmuch as the Club has advanced inconsistent pleas as noted hereinabove.”

This judgment was rendered in a factual context whereby respondent was laying a challenge to the very lease under which it was occupying the subject premises. It would have no application to the facts of the present case.

89. There should be no challenge to the well settled principles of law. However, a different dimension to the consideration in terms of the notification dated 6th November, 2013 is pointed out. Mr.Sharma, learned counsel for the appellants has placed reliance on a Division Bench pronouncement of this court reported at **2013 1 AD (Delhi) 779 S.K. Choudhary & Ors. Vs. Govt. of NCT of Delhi & Anr.** and contends that this court has explained the manner in which the principles laid down in *Umadevi* must be worked. In this regard, learned counsel for the appellants has placed reliance on the following directions by the Division Bench:-

“8. One more fact of importance needs to be noted. **35 posts** of Junior Engineers are **sanctioned** as also **created in** DSIDC and when writ petitioners were, after induction in service as Work Assistants/Technical Supervisors made to perform duties as Junior Engineers or Assistant Engineers, **11 vacant posts** of Junior Engineers and Assistant Engineers **existed** in DSIDC.

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10. The question which we are now called upon to address is the **applicability of Paragraph 53 of the opinion of the Supreme Court in Umadevi's case**, which otherwise holds that creation of posts is a power of the executive and **no court can issue a mandamus, effect whereof is that the executive is to create a post. Directions to regularize employees have been treated as akin to an order creating a post.** The reason is but obvious. Unless there exists a sanctioned post there cannot be an individual holding the post on regular basis. But an exception is carved out in para 53.

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15. As explained by the Supreme Court in a later opinion reported as AIR 2010 SC 2587 State of Karnataka v. M.L. Kesari (refer Paragraph 8 of the opinion), the purport and object of afore-noted exception carved out by the Supreme Court in Umadevi's case was that those who possess the requisite qualifications and had served for long as daily wage/adhoc/casual employees but against sanctioned posts, should be entitled to be considered for their services being regularized in view of the long service rendered by them.

16. But, **what should be the process to subject these employees to be regularized in service was neither**

opined upon by the Supreme Court in Umadevi's case or M.L. Kesari's case. We shall advert to this aspect a little later.

17. The law on the subject needs to be understood with reference to Paragraph 3 of the decision in Umadevi's case and the law declared by the Supreme Court in the three opinions reference where to has been made in Paragraph 53 of the decision in Umadevi's case. The three decisions are:-

- (i) AIR 1967 SC 1071 State of Mysore v. S.V. Narayanappa;
- (ii) (1972) 1 SCC 409 R.N. Nanjundappa v. T. Thimmiah; and
- (iii) (1979) 4 SCC 507 B.N. Nagarajan v. State of Karnataka.

18. The said three opinions, as explained in Paragraph 15 and 16 of the decision in Umadevi's case, draw a *distinction between an illegal and an irregular appointment. Illegal appointment would be of a kind where there exists no sanctioned post and a person is appointed by means of a selection process which hits the very essence of a Recruitment Rule. An irregular appointment would be where a procedure to follow the appointment, not going to the root of the appointment is followed.*

19. Now, a *procedure or manner of appointment* which *goes to the root of the appointment* would be where a *person who is ineligible* is appointed and there is *no sanctioned post; eligibility*, with reference to the educational, experience and age requirement is *ignored*.

20. So understood, the facts of the instant case would bring out that the *writ petitioners were irregularly appointed and not illegally appointed*.

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22. Thus, the respondents would be obliged, as a *one-time measure*, to *undertake the exercise to fill up the vacant sanctioned posts* and while so doing, would be *obliged to consider the 19 writ petitioners*.

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25. Now, *making petitioners compete with fresh graduate Engineers whose theoretical knowledge, being immediately out of college, would be most unfair*.

26. Noting that neither in Umadevi's case nor in M.K. Kesari's case the Supreme Court rendered an opinion as to what *process of regularization should be adopted* in cases where initial appointment was irregular and not illegal, we *expand upon this subject* by opining that the *process through which irregular appointments need to be subjected to convert the same into regular appointments has to be a selection process devised where only the irregularly appointed employees are uniformly tested with respect to the minimum theory; keeping in view the experience gained by them*. In other words, the test has not to be theoretical but an application based selection process.

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28. Since *appointment of the petitioners was irregular and not illegal*, in that, their existed vacant posts of Engineers in DSIDC when petitioners were inducted as Engineers and the petitioners were qualified, we *dispose of the writ petition confirming*

*the impugned decision pronounced by the Tribunal but modify the same with reference to direction issued to advertise the posts and effect selection through DSSSB: by substituting the **direction that the respondents would devise a suitable methodology to subject the writ petitioners to an induction test which would be designed with reference to application and not theory.** Age relaxation benefit would be granted to the petitioners. As noted by us the fact not in dispute is that the petitioners possess the necessary educational qualifications.”*

(Emphasis by us)

90. Our attention is drawn to the order dated **9th January, 2013** by the Supreme Court of India in ***Special Leave to Appeal (Civil) No. 1115/2014 DSIDC v S.K. Chaudhary & Ors.*** which was dismissed as withdrawn with the liberty sought by the DSIDC to approach this court for a limited review as the direction to devise the suitable methodology had to be issued to the Delhi State Subordinate Selection Board (the recruiting agency) and not the DSIDC. So far as the direction to devise the special test is concerned, the same has not been disturbed.

91. We are informed by Mr.Sudhir Nandrajog, learned senior counsel that the educational qualification for the post of Junior Assistant though have been changed by the UGC and the rules have been modified to this extent, however, the position before us is that the appellants possessed the essential educational qualification at the time of their initial appointment and they continue to do so even under the amended rules.

92. Learned counsel for the Delhi University would press that in *S.K. Chaudhary v. Government of NCT of Delhi*, it had taken the decision to regularise the engineers and it was not so in the present case. We find that in *S.K. Chaudhary* as well, the submission was that the appointment of the petitioners was irregular and not illegal but against vacant sanctioned posts. Even before the pronouncement in *Umadevi*, the DSIDC made a request to the Government of NCT of Delhi on 19th September, 2002 as a one-time measure to regularise the services of engineers who were working with it which request was rejected by the Government of NCT of Delhi.

93. The appellants have however urged that the respondents have ignored one material factor in the manner in which they were subjected to the written test. It is submitted that the University is conscious when it gave the age relaxation that the appellants were persons educationally and technically trained under courses and training programmes then in vogue. There is no dispute to the fact that all such persons who applied possessed the prescribed qualifications and were eligible for consideration and appointment. The qualifications and skills were acquired prior to the appointments on contract basis which have admittedly continued/renewed over a long period of time. As noted by us above, the contract employees have rendered satisfactory service. However, fresh graduates who have undergone recent trainings would have different skills and undergone different methodology. The older applicants thus cannot be fairly tested on the same

standards as fresh applicants who have just finished their education and trained recently.

94. Mr. Sanjoy Ghose and Mr. Rajeev Aggarwal contend that the test which the appellants were subjected is, therefore, neither fair nor appropriate and that the respondents ought to have taken into consideration the fact that the appellants have been in service with them for long periods and that they had and were rendering decades of fruitful service to the organisation. It is submitted that the respondents were required to design a test which assess the appellants taking into account the years when they entered the service.

95. The petitioner in *S.K. Choudhary (supra)* had the benefit of order for regularization by the Central Administrative Tribunal and the challenge in the writ petition before the Division Bench was that the law declared by the Supreme Court in *Umadevi case (supra)* did not warrant a general selection process to be completed (para 3). It is also noteworthy that the petitioners were seeking appointment to the post of Junior Engineers who had initially been recruited as either Work Assistant, while some others were recruited as Assistant Engineers. All the writ petitioners were qualified engineers.

96. The respondents are pressing that the appellants are prohibited from any relief only for the reason because they have participated in the recruitment process. We find from the above narration of facts that the respondents themselves deemed it fair to grant the age relaxation to the persons working on contract basis

with it, so much so that even such persons who had completed merely one year as contract labour, were also given the benefit of age relaxation which is in consonance of the observations of the Supreme Court in para 53 of *Umadevi*. The respondents gave no waiver of the eligibility conditions. None is sought by the appellants before us. The appellants have also not sought any exemption of the requirement of the recruitment rules to undergo either a written test or the skill test as per the amended recruitment rules. The doctrine of election does not prohibit an examination of the contention that the evaluation of the appellants pursuant to the Notification of November, 2013 was not on a fair platform or basis.

97. In response to our query, Mr. Santosh Kumar, learned counsel for the Delhi University has informed that pursuant to the selection process initiated by the notification dated 6th November, 2013 the respondents were not able to fill up all the vacant posts.

The above discussion can be summed thus:

- (i) The court undertakes the exercise of regularising the services of any person irregularly appointed.
- (ii) The appellants are either persons who were employed on contract basis on the post of Junior Assistant against regular vacancies or are persons who were so employed who have formed the appellant no.1 union. These appellants possessed the essential qualifications for appointment when they were inducted.

- (iii) The present case is concerned with appointment to the posts of Junior Assistant, a clerical post. The job does not entail any technical requirements.
- (iv) The job requirements of Junior Assistants in the Delhi University has not substantially changed from the time when the appellants were initially appointed till date. The appellants have been rendering satisfactory service even on date.
- (v) The Delhi University has itself taken the decision to grant an opportunity to the contractual employees to participate in the regular selection.
- (vi) The Delhi University was unable to fill up all the vacancies pursuant to the notification dated 6th November, 2013.
- (vii) The appellants assail the fairness of the opportunity granted by the University and the reasonableness as well as efficacy of the examination to which persons must be subjected. This is the limited aspect to which reference is made to **S.K. Chaudhary's** pronouncement.
- (viii) Pursuant to the notification of November, 2013, the University had verified that they possess the qualifications as per the applicable rules even on date.
- (ix) There is, however, substance in the grievance of the appellants that the respondents ought to have designed a test which would have suitably assessed the ability of the persons as the appellants who had been working with the respondent-University on contract basis.

Petition not maintainable

98. Lastly, it was urged before us that the writ petition at the instant of an unregistered society was not maintainable. In this regard, reference was made to the pronouncement of the Supreme Court reported at (2006) 11 SC 731 B. *Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. & Ors.* In this case, the association in question had claimed that it was trade union registered under Trade Unions Act, 1996. This averment, as a fact, was found to be false in as much as registration of the first respondent under the Trade Union Act had been cancelled and it was not a registered or recognised union. The writ petition had laid a challenge to the appointment of the petitioner to the post of Managing Director of the Board. No personal claim of any worker was agitated. The locus standi of this unregistered trade union to do so was challenged.

99. So far as the locus standi is concerned, in para 39, the court had reiterated the well settled principle “*that if a citizen is no more than a wayfarer or officious intervener without any interest or concern that what belongs to anyone of the 660 million people of this country... the doors of the court will not ajar for him.*”

100. It was further held that the employees association had not approached the court with clean hands. In para 42, it was held that the employees union had approached the court by suppressing material facts and had snatched an order on the basis of wrong

submissions when the Employees' Union had no locus standi to maintain the writ petition on the relevant date.

101. So far as the present case is concerned, we have noted above that the petitioner nos. 2 and 3 are persons who stand employed on contractual basis by the respondents. Therefore, even if we could agree with the respondent no.1 that the writ petition and appeal at the instance of the petitioner no.1 was not maintainable, the writ petition and the appeal at the instance of the respondent nos. 2 and 3 are maintainable.

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.

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.

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.

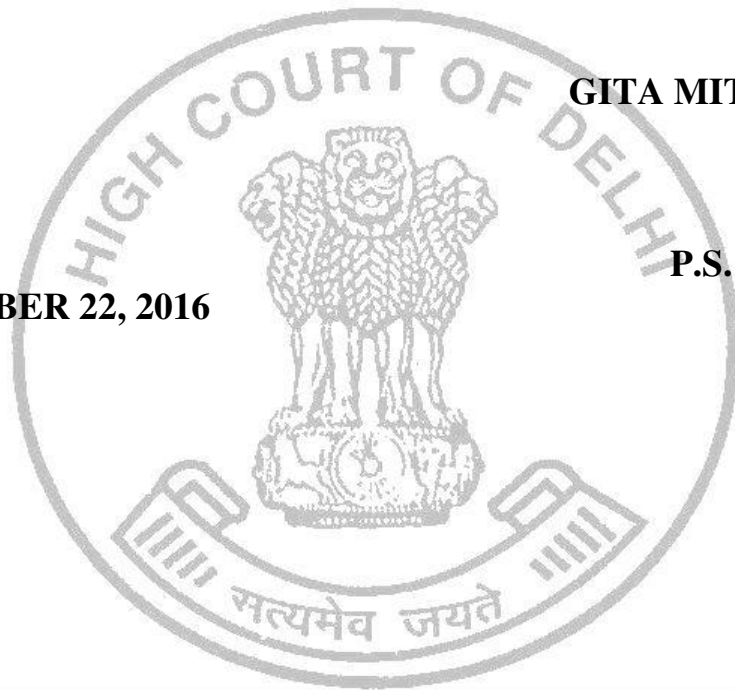
103. It is also clarified that the same persons who shall be so tested would be those who would be eligible pursuant to the advertisement dated 6th November, 2013.

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.

CM Nos.20764/2013, 10976/2014

In view of the order in the main LPA, these applications do not survive for adjudication and are disposed of as such.

NOVEMBER 22, 2016
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GITA MITTAL, J

P.S. TEJI, J