

## Poonam And Ors vs Gnctd And Ors on 7 April, 2022

**Author: V. Kameswar Rao**

**Bench: V. Kameswar Rao**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 5397/2022, CM APPL. 16107/2022

POONAM AND ORS.

Through:

...  
Mr. Pankaj Kumar, Mr.  
Naseem, Mr. Sidharth  
Singh, Mr. Shubendu  
Mr. Rishabh Agarwal,

versus

GNCTD AND ORS.

Through:

...  
Mr. Anuj Aggarwal, A  
Ms. Ayushi Bansal, M  
and Ms. Aishwarya Sh  
for R-1 & R-3/GNCTD  
Mr. Shivendra Singh,

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO  
ORDER

% 07.04.2022

1. There are 26 petitioners in this petition who have filed this petition with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

(a) Declare that the initial appointment of the petitioners were in consonance with Article 14 and 16 of Constitution of India and as per existing Rules, Therefore, the appointment of the petitioners were procedurally substantive and declare that the petitioners are entitled for the relief of absorption/regularization from the date filing of the present petition with all consequential relief;

And/ Or Direct the Respondent to consider the petitioners for one- time absorption as laid down by hon'ble Supreme Court in Narinder Kumar Tiwari Vs. State of Jharkhand (2018) 8 SCC 238 read with Secretary, State of Karnataka Vs. Umadevi (2006) 4 SCC 1.

(b) Pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of Justice.

It is prayed accordingly."

2. The submission of Mr. Pankaj Kumar, learned counsel for the petitioners is that the petitioners were appointed on contractual basis between the years 2009 and 2012 as Technical Assistants in various Government Polytechnic/Institutes by following due process of law inasmuch as the posts are sanctioned reservation roster was followed, by calling the petitioners for a walk-in interview and the selection was made by a duly constituted Selection Committee. The educational qualification and other requirements were provided as per existing recruitment rules and the selection process was fair and transparent which is akin to a regular appointment except that the posts advertised were not substantive posts.

3. He states that the appointment of the petitioners continued year after year and the last extension was given on March 01, 2022, up till September 06, 2022. He stressed on the fact that all the petitioners herein would have served for more than 10 years as on the date of expiry of the present contract.

4. The petitioners have been performing their duties and responsibilities without any blemish and /or adverse record. The petitioners have been representing to the authorities for the regularisation / absorption of their services. They had also approached the Central Administrative Tribunal by filing OA 100/3635/2018. The said OA was decided on September 27, 2018, directing the respondents to consider the claim of the petitioners for regularisation within a period of 90 days. As is clear from the order dated January 02, 2019, the claim of the petitioners was rejected. The petitioners have challenged the order dated January 02, 2019, by filing a writ petition No.11520/2019 before this Court. The said writ petition was decided on November 01, 2019, whereby this Court had called upon the petitioners to make a fresh representation seeking a policy decision by the Government of NCT of Delhi on the ground contained in the writ petition and for such other grounds as may be relevant to the petitioners.

5. Mr. Kumar states the petitioners on January 14, 2020, had made representations to the respondents in that regard. In the meantime, on May 26, 2020, Delhi Skills and Entrepreneurship University was established under the Delhi Skills and Entrepreneurship University Act, 2019, and all technical institutions where the petitioners were appointed including the polytechnics were merged with the University without disposing of the representation. The respondent University in the year 2020-21 had advertised 123 vacancies for the post of Technical Assistant out of 253 sanctioned posts and made appointments. He concedes to the fact that none of the petitioners have applied and appeared in the process of regular selection under the legitimate expectation and reasonable anticipation that the representation for absorption/regularisation would be accepted. Even thereafter, on March 04, 2022, the petitioners gave further representation to the respondents but the same has not been decided which resulted in the filing of the present petition.

6. Mr. Kumar has relied upon the following judgments in support of his submissions that the respondents cannot rely on contractual appointments and continue to retain the petitioners for such a long time without making their status permanent. In fact, according to him, the Supreme Court has deprecated this kind of action of the employer. He states that 10 years of contractual service

does give a right to the petitioners for regularisation.

i. Uma Devi (supra) ii. State of Karnataka v. M. L. Kesari, (2010) 9 SCC 247. iii. Sheo Narain Nagar & Ors. v. State of U.P. & Anr., (2018) 13 SCC 432.

iv. State of Gujarat & Ors. v. PWD Employees Union & Ors., (2013) 12 SCC 417.

v. Radha Dubey v. Govt. of NCT of Delhi & Ors., SLP(C) vi. Nihal Singh & Ors. v. State of Punjab & Ors., (2013) 14 SCC vii. Sachin Ambadas Dawale v. The State of Maharashtra, (2014) 3 AIR BOM 11.

viii. Sudarshan Rajpoot v. UPSRTC, (2015) 2 SCC 317. ix. Indian Council of Medical Research v. K. Rajalakshmi & Anr., (2005) SCC Online Mad 16.

x. P. Rajesh & Ors. v. Karnataka Power Transmission Corporation Limited & Ors., MANU/KA/4494/2015. xi. Life Insurance Corporation of India & Anr. v. Kailash Nath & Ors., 2007 SCC OnLine All 1365.

xii. Chander Mohan Negi & Ors. v. State of Himachal Pradesh & Ors. (2020) 5 SCC 732.

xiii. Somesh Thapliyal & Anr. v. Vice Chancellor, H.N.B. Garwhal University 7 Anr., 2021 Sec.

xiv. M.C. Bindal v. R.C. Singh & Ors., (1989) 1 SCC 136. xv. Pratap Kishore Panda v. Agni Charan Das (2015) 17 SCC

7. On a specific query by the Court as to why had the petitioners had not participated in the regular selection process in the year 2020-2021, Mr. Kumar had reiterated the submission as noted above that the petitioners were under the legitimate expectation that the representation for regularisation would be accepted in their favour.

8. On the other hand, Mr. Shivendra Singh, learned counsel appearing for the University, respondent No.2 would contest the writ petition by stating that the petitioners shall not be entitled to regularisation in view of the judgment of the Supreme Court in the case Secretary, State of Karnataka v. Uma Devi, 2006 4 SCC 1.

9. During the course of the hearing, on April 5, 2022, it was put to Mr. Shivendra Singh as to whether there are any vacancies on the post of Technical Assistant and is there any decision by the University to make a selection against those vacancies. He on instructions had stated that though the vacancies are in existence there is no decision of the University to fill up the posts through the process of selection.

10. Having heard the learned counsel for the parties, it is conceded by Mr. Kumar that the initial selection was through the process of walk-in- interview and the appointment of the petitioners was on a contractual basis with a clear stipulation in their appointment letters that the appointment shall be for a period of six months or till formulation of personnel policy/regular recruitment

through DSSSB whichever is earlier.

11. He also conceded that the respondents have issued the advertisement for making regular appointments to which admittedly the petitioners have not applied. This inaction on the part of the petitioners, not to apply for regular selection, is itself enough for this Court to dismiss the petition.

12. This I say so, in view of the fact that the petitioners are aware of the fact that their appointment is contractual till the regular recruitment takes place. They were required to apply against the advertised posts. Having not done that they have lost an opportunity of getting themselves regularly appointed in the respondent No.2, University.

13. That apart, the petitioners having failed to apply through the process of regular selection cannot claim regularisation on the strength of their appointment in the years 2009-12 only on the ground that they have worked for 10-13 years.

14. This I say so because the nature of appointment of the petitioners is contractual, not permanent, not many persons though fulfilling the eligibility would have applied for the same. Supreme Court in the case of Official Liquidator v. Dayanand & Ors., (2008) 10 SCC 1, as in paragraph 52 held:-

"xxxx xxxx xxxx ...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.

xxxx xxxx xxxx 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."

15. No doubt after the order was passed by this Court on November 01, 2019, the respondents were required to consider the representation made by the petitioners with regard to their grievances but the fact remains that the inaction of the respondents in not regularising the petitioners cannot be held to be bad in view of the authoritative pronouncement of the Supreme Court in the case of Uma Devi(supra), wherein the Supreme Court held that public employment has to be in terms of the constitutional scheme being in conformity with the provisions of Article 14 and 16 of the Constitution, by giving wide publicity and considering every person who fulfils the eligibility conditions and applies for the post. In paragraphs 43 and 50 the Supreme Court has held as under:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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50. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the

Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

16. It is also a settled position of law that regularisation/absorption is not a mode of appointment [ref: Nagar Mahapalika v. Vibha Shukla, (2007) 15 SCC 161]. This I say so because the issuance of an advertisement shall attract talent and regularising/absorbing the petitioners without considering all eligible persons through a process open to the public shall violate Article 14 which shall be inconsistent with the law laid down by the Supreme Court in the Uma Devi (supra).

17. During the course of the hearing, Mr. Kumar had also stated that the petitioners are continuing as employees with the respondents and there is no threat of termination. Even Mr. Shivendra Singh would agree with the submission made by Mr. Kumar that there is no decision to dispense with the services of the petitioners.

18. If that be so, the petitioners having put in contractual service of 10-13 years with the respondents including the respondent No.2 University, and the fact that they have the working knowledge of the post on which they have been working since then, such experience / expertise must be given due regard and it is also conceded case that the petitioners have become overage, so the only way forward is keeping in view the judgment of the Supreme Court in University of Delhi & Ors. v. Delhi University Contract Employees Union & Ors., Civil Appeal No. 1007/2021 and 1008/2021 which was decided on March 25, 2021, wherein the Supreme Court in paragraphs 12 and 13 has stated under, which shall mean the petitioners shall participate in regular selection:-

"12. It is true that, as on the day when the judgment in Umadevi 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."

19. So it follows in view of the above judgment of the Supreme Court that the services of the petitioners are being continued and also the fact that the vacancies are existing for the post of Technical Assistant, as and when the respondent, University, decides to fill the posts through open selection, the petitioners shall also apply against the same but in their case, they shall have the benefit of age relaxation to the extent they have worked with the respondents and the benefit of each completed year of engagement with the respondents is given in their favour at the time of selection like awarding certain marks, up to a ceiling limit so that they may have some advantage but not an undue advantage over the outsiders. This shall be in conformity with the law laid down by the Supreme Court as noted above and also Article 14 of the Constitution of India.

20. With the above, the petition and pending application are disposed of.

V. KAMESWAR RAO, J APRIL 07, 2022/ds