

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 13200 of 2013****With****SPECIAL CIVIL APPLICATION NO. 12785 of 2013****With****SPECIAL CIVIL APPLICATION NO. 13193 of 2013****With****SPECIAL CIVIL APPLICATION NO. 13539 of 2013****With****SPECIAL CIVIL APPLICATION NO. 13741 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14027 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14042 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14115 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14116 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14119 of 2013****With****SPECIAL CIVIL APPLICATION NO. 14120 of 2013****With****SPECIAL CIVIL APPLICATION NO. 18717 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 18723 of 2013****With****SPECIAL CIVIL APPLICATION NO. 18730 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 18734 of 2013****With****SPECIAL CIVIL APPLICATION NO. 18735 of 2013****TO****SPECIAL CIVIL APPLICATION NO. 18736 of 2013****With****SPECIAL CIVIL APPLICATION NO. 18729 of 2013****With**

SPECIAL CIVIL APPLICATION NO. 18737 of 2013
TO
SPECIAL CIVIL APPLICATION NO. 18740 of 2013
With
SPECIAL CIVIL APPLICATION NO. 1338 of 2014
TO
SPECIAL CIVIL APPLICATION NO. 1552 of 2014
With
SPECIAL CIVIL APPLICATION NO. 13967 of 2013
With
SPECIAL CIVIL APPLICATION NO. 14173 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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PRADEEP NAVINBHAI PATEL & 61....Petitioner(s)

Versus

STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR DC DAVE, SENIOR ADVOCATE with MR PA JADEJA, ADVOCATE for the Petitioners in Special Civil Application Nos.13200/2013, 12785/2013, 13193/2013, 13741/2013, 14042/2013, 14115/2013, 14116/2013, 1338/2014 to 1552/2014, 13967/2013.

MR NISARG D SHAH, ADVOCATE for the Petitioners in Special Civil Application Nos.18717/2013 to 18723/2013, 18730/2013 to 18734/2013, 18735/2013 to 18736/2013, 18729/2013, 18737/2013 to 18740/2013,

13539/2013, 14027/2013, 14119/2013, 14120/2013, 14173/20013.

MR DM DEVNANI, ASST.GOVERNMENT PLEADER for the Respondent(s) No.1–2 in Special Civil Application Nos.13200/2013, 12785/2013, 13193/2013, 13741/2013, 14042/2013, 14115/2013, 14116/2013, 1338/2014 to 1552/2014, 13967/2013.

MR VISHAL PATEL, ASST.GOVERNMENT PLEADER for the Respondent(s) No.1–2 in in Special Civil Application Nos.18717/2013 to 18723/2013, 18730/2013 to 18734/2013, 18735/2013 to 18736/2013, 18729/2013, 18737/2013 to 18740/2013, 13539/2013, 14027/2013, 14119/2013, 14120/2013, 14173/20013.

MR DG SHUKLA, ADVOCATE for the Gujarat Public Service Commission.

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CORAM: HONOURABLE SMT. JUSTICE ABHILASHA KUMARI

Date : 31/01/2014

COMMON ORAL JUDGMENT

1. Rule. Mr.D.M.Devnani, learned Assistant Government Pleader, waives service of notice of Rule for the respondent-State of Gujarat in some of the petitions and Mr.Vishal Patel, learned Assistant Government Pleader waives service of notice of Rule for the respondent-State of Gujarat in the other petitions. Mr.D.G.Shukla, learned advocate waives service of notice of Rule for the Gujarat Public Service Commission. In some petitions, the concerned Colleges have been added as parties. In spite of service of notices, they have not chosen to appear before this Court. Hence, there appears to be no necessity of issuing notices of Rule to them. In any

event, they are formal parties and no action of theirs is under challenge. As the learned Assistant Government Pleaders are appearing for the State Government, their interest is adequately protected.

2. This group of petitions pertains to the challenge made by the petitioners, who have been appointed as ad-hoc Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, to the termination of their services upon completion of eleven months of service. As almost identical issues of fact and law arise in all the petitions, they are being heard together and decided by a common judgment.

3. The factual matrix in which the petitions have been preferred is that, the Commissioner of Technical Education, issued an advertisement on his Website in the month of September, 2003, for filling up the vacant posts of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, on contractual basis, for a fixed period of eleven months or till regularly selected candidates by the Gujarat Public Service Commission ("GPSC", for short), are available, whichever is earlier. The

petitioners applied for the said posts in Government Engineering Colleges and Government Polytechnics, across the State of Gujarat. As they possess the requisite qualifications for the said posts, they were appointed as Assistant Professors/Lecturers by issuing appointment orders of various dates. The appointment orders of the petitioners are identical in all cases and contain the same terms and conditions. The petitioners were appointed on a monthly salary of Rs.30,000/- in the cases of Assistant Professors in Government Engineering Colleges and Rs.25,000/- in the cases of Lecturers in Government Polytechnics. As per condition No.1 of the appointment letters, the period of appointment was for eleven months or till the availability of regularly selected candidates by the GPSC. In the present cases, the period of eleven months was to come to an end in the month of September, 2013. Apprehending the termination of their services and before the completion of the period of eleven months, the petitioners approached this Court by filing the present petitions. By an order dated 22.08.2013 passed in Special Civil Application No.13200/2013 and connected matters (and similar

orders in other petitions), this Court, following the judgment dated 07.09.2011 passed by the Division Bench in Letters Patent Appeal No.2986/2010 and allied matters, protected the petitioners by way of an ad-interim arrangement to the effect that the service conditions of the petitioners would not be altered on the ground that their contract has come to an end. This arrangement was to continue till further orders. The Court also made it clear that this order would not confer any right upon the petitioners. It may be noted that during the pendency of the present petitions, the State Government issued a fresh advertisement on 15.08.2013, for recruitment to the posts of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, again for a period of eleven months, on terms and conditions identical to the cases of the petitioners before this Court.

4. The grievance of the petitioners is that they were appointed for a period of eleven months on contractual/ad-hoc basis, therefore, till such time as regularly selected candidates by the GPSC are not

available, their services ought not to be terminated by appointing other Assistant Professors/Lecturers on contractual/ad-hoc basis, on the same terms and conditions.

5. The petitioners have also challenged the fresh advertisement dated 15.08.2013, issued by the State Government for appointment of ad-hoc Assistant Professors/Lecturers for a period of eleven months.

6. In the above background, learned counsel for the respective parties have addressed detailed arguments, which may be briefly referred to hereinbelow.

7. Mr.D.C.Dave, learned Senior Advcoate with Mr.P.A.Jadeja, learned advocate for the petitioners in some of the petitions, has submitted that the petitioners are eligible and qualified for the posts of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, as the case may be. All the petitioners possess the requisite qualifications to be appointed by the GPSC and are working against sanctioned posts that have been determined by the All India Council for Technical

Education, which decides the student-teacher ratio. The petitioners have been appointed for a period of eleven months or till the availability of regularly selected candidates by the GPSC, whichever is earlier, and have accepted the terms and conditions by filing declarations. However, it is an undisputed fact that during their tenure of eleven months, no regularly appointed candidates from the GPSC were available. This situation has continued till date, and is likely to continue, as the process of appointment of regularly selected candidates is likely to take some time. Even before the expiry of eleven months, the State Government sought to terminate the services of the petitioners by issuing a fresh advertisement dated 15.08.2013, despite the fact that no regularly selected candidates were available. By way of the fresh advertisement, the State Government sought to fill up the vacancies that would have arisen by the termination of the services of the petitioners, intending to replace them with another set of ad-hoc employees, with similar terms and conditions.

8. While submitting that the petitioners do not

claim any right to continue in service once the regularly selected candidates are available, the main thrust of the submissions advanced by the learned Senior Advocate on behalf of the petitioners is that, it is a settled position of law that ad-hoc employees should not be replaced by other ad-hoc employees. It is submitted that an identical situation arose in the year 2011, when the services of similarly situated Assistant Professors/Lecturers were sought to be terminated by appointing fresh persons on ad-hoc basis. The aggrieved persons approached this Court by filing petitions. The orders passed therein were the subject matter of Letters Patent Appeals. Learned Senior Advocate has relied upon a judgment dated 07.09.2011 passed in Letters Patent Appeal No.2986/2010 and connected matters, wherein the Division Bench, in an identical situation, held that, till the posts are filled up by regular appointment, the ad-hoc Assistant Professors/Lecturers be not disturbed. It is submitted that in the present case as well, a similar situation has arisen, therefore, the petitioners are entitled to similar orders.

9. Elaborating further upon this proposition of law, learned Senior Advocate has relied upon the judgment of the Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others**, reported in (2006) 4 SCC 1, wherein the Supreme Court has, after referring to several other judgments, taken note of the principles of law expounded in **State of Haryana and others Vs. Piara Singh and others**, reported in (1992) 4 SCC 118, to the extent that an ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee, but only by a regularly selected employee.

10. It is further submitted that in view of the fact that the petitioners are holding the requisite qualifications and are eligible for appointment by the GPSC, and as regularly appointed Assistant Professors/Lecturers are not available, there is no justification for the action of the State Government in issuing a fresh advertisement for recruitment of other ad-hoc employees, on the same terms and conditions, against the posts occupied by the petitioners, after seeking to terminate their

services. It is urged that in view of the above judgment of the Division Bench, the State Government ought to permit the petitioners to continue to work until regularly appointed candidates are available. The judgment dated 07.09.2011 passed in Letters Patent Appeals No.2986/2010 and connected matters has been accepted and implemented by the State Government, therefore, there is no justification for taking a different stand in the cases of the petitioners, especially as the factual and legal position is identical in the present cases. The situation of the petitioners prevailing as of today is *pari materia* to the situation that prevailed at the time of rendering the above judgment by the Division Bench, therefore, the petitioners are squarely covered by it. It is contended that the State, being a model employer ought not to take a stand that the earlier judgment was passed in the cases of other persons and not in the cases of the present petitioners, and thereby deprive the petitioners of its benefit.

11. Learned Senior Counsel has clarified that the challenge to the advertisement dated 15.08.2013 is restricted to the extent that it mentions that the

petitioners and several similarly situated persons working on ad-hoc basis, would be terminated. However, the petitioners do not press the challenge to the cases of other Assistant Professors/Lecturers, who may have been recruited on ad-hoc basis, pursuant to the said advertisement, against any other vacant posts.

12. Mr.Nisarg D. Shah, learned advocate for the petitioners in some of the petitions has adopted the arguments advanced by Mr.D.C.Dave, learned Senior Advocate.

13. On the strength of the above submissions, it is prayed that the petitions be allowed.

14. Mr.D.M.Devnani, learned Assistant Government Pleader has appeared for the State Government in some of the petitions and Mr.Vishal Patel, learned Assistant Government Pleader has appeared for the State Government in the other petitions. The submissions advanced by them are similar, as follows.

14.1 It is submitted that it is true that the judgment of the Division Bench dated 07.09.2011 passed in Letters Patent Appeal No.2986/2010 and allied matters

has been accepted and implemented in the cases of the respondents therein. However, the directions of the Division Bench do not cover the cases of the petitioners who were not before the Court at the relevant point of time. Unless and until the GPSC completes the recruitment process by selecting candidates for regular appointment to the post of Assistant Professors/Lecturers, the State Government can only make appointments on ad-hoc/contractual basis, for a particular period of time, which in the present case is eleven months.

14.2 It is further submitted that from the appointment orders, it is clear that the petitioners are contractual appointees and, therefore, have no right to continue beyond the period of contract. They have accepted their appointments by filing declarations to this effect. It is open to the State Government to terminate their services at the end of the period of contract and appoint fresh persons, even though it be on the same terms and conditions.

14.3 It is next submitted that the State Government has filed a Letters Patent Appeal against the interim

order dated 22.08.2013, passed by this Court in Special Civil Application Nos.13200/2013 and connected matters. However, the said Letters Patent Appeal has not yet been registered, as there is delay and the application for condonation of delay has not been decided.

14.4 Learned Assistant Government Pleader has further submitted that the law laid down in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, is no longer good law, as this judgment is overruled in **Official Liquidator Vs. Dayanand and others, reported in (2008) 10 SCC 1** and **Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmchari Sanghatana, reported in (2009) 8 SCC 556**, therefore, the reliance placed by the learned Senior Counsel on the principles of law enunciated in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, is unfounded.

14.5 Reiterating the right of the State Government to terminate the services of the petitioners and replace them with fresh ad-hoc/contractual employees on the same terms and conditions, the learned Assistant

Government Pleaders pray that the petitions be rejected.

15. Mr.D.G.Shukla, learned advocate has appeared for the Gujarat Public Service Commission. He submits that the GPSC has issued an advertisement dated 30.09.2013 for filling up the vacancies of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics on permanent basis, pursuant to the requisition received from the State Government on 07.08.2013. In all, there are 1856 posts to be filled up. The recruitment process has commenced, but is at different stages for different subjects. It is submitted that applications have been received and in some subjects preliminary tests are yet to be conducted, while in certain other subjects interviews have been held. In certain other subjects, interviews are yet to be held. The learned advocate for the GPSC submits that now the State Government has come out with another Notification dated 28.10.2013, regarding equivalence of qualifications. Due to this, the GPSC will have to conduct the exercise of consultation with the State Government and issuance of a Corrigendum for those left out candidates, who can

claim equivalence. The entire recruitment process is, therefore, likely to take some time and at least 10 to 12 months will be required to complete it. In the subjects where the recruitment process will be over earlier, the GPSC will recommend the names of the candidates for the subject in which the recruitment process has culminated. The entire recruitment process is likely to be completed in a phased manner.

16. Mr.D.C.Dave, learned Senior Advocate for the petitioners submits, in rejoinder, that the requisition was made by the State Government on 07.08.2013, pursuant to the judgment of the Division Bench dated 07.09.2011 passed in Letters Patent Appeal No.2986/2010 and allied matters, therefore, from the above, it appears that the entire process of selection of regular candidates by the GPSC would take much more time than is being submitted by the learned advocate for the GPSC.

17. Learned Senior Counsel has submitted that the judgment in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)** has been rendered by a bench of five Hon'ble Judges of the

Apex Court, upon a reference being made by a Bench of three Hon'ble Judges of the Supreme Court in **Secretary, State of Karnataka and others Vs. Umadevi (2) and others**, reported in (2006) 4 SCC 44. The terms of reference are essentially set out in paragraph-7 of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, and pertain to whether employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, have any right to approach the High Court for the issue of a Writ of Mandamus directing that they may be made permanent/absorbed in the posts where they had been working. It is submitted that while deciding this issue, one of the judgments that was referred to the Larger Bench was **State of Haryana and others Vs. Piara Singh and others (Supra.)**. In paragraph-26, the Supreme Court has overruled paragraph-50 of the judgment in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, where directions had been given to each State to prepare a Scheme, for regularization of such employees consistent with its reservation policy and the observations made in this judgment.

18. The principle of law enunciated in the judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, to the effect that ad-hoc or temporary employees should not be replaced by other ad-hoc or temporary employees, has not been touched by the Larger Bench of the Supreme Court in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**. It is submitted that this principle of law still prevails. Referring to paragraph-54 of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, learned Senior Counsel has contended that the Constitution Bench of the Supreme Court has clarified that those principles run counter to this decision, shall no longer be considered as precedents. The judgment in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, is regarding the legality, or otherwise, of temporary or casual workers or daily wagers against the posts where they have been working for a long period of time. The Supreme Court has considered various modes of appointments terming some appointments as irregular ones and others as illegal

ones and has laid down principles of law regarding such appointments. These principles would not be relevant to the case in hand which is regarding ad-hoc employees being replaced by other ad-hoc employees.

19. It is contended that the judgment in **Official Liquidator Vs. Dayanand and others (Supra.)**, there is a reference to the case of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, in paragraph-67, with regard to regularization of the services of temporary employees. In that context, paragraph-26 of the judgment in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, has been reproduced in this judgment, wherein paragraph-50 **State of Haryana and others Vs. Piara Singh and others (Supra.)**, has been overruled.

20. Similarly, in **Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmchari Sanghatana (Supra.)**, there is a reference to the case of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, in the context of regularization. The Supreme Court has held in this judgment that the

judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, does not lay down the correct law regarding invocation of the doctrine of legitimate expectation, to enable the employees to claim permanency or regularization in service, though they had not been selected in terms of the rules for appointment. It is submitted that the contention of the learned Assistant Government Pleader that the judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, has been overruled in its entirety is, therefore, not correct. The principle of law that an ad-hoc employee should not be replaced by another ad-hoc employee has not been overruled by the Constitution Bench of the Supreme Court. In **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, what has been overruled is only the principle of law laid down in paragraph-50 of the judgment in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, and not the judgment as a whole.

21. This Court has heard Mr.D.C.Dave, learned Senior Counsel for the petitioners, Mr.D.M.Devnani and

Mr.Vishal Patel, learned Assistant Government Pleaders for the State Government and Mr.D.G.Shukla, learned advocate for the Gujarat Public Service Commission, at length and considered the material on record as well as the submissions advanced at the Bar.

22. It is not disputed that the petitioners possess the requisite qualifications for the posts of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, as required by the GPSC. However, the fact remains that at the relevant period of time when the petitioners came to be appointed, no regularly selected candidates by the GPSC were available to fill up the said posts. Moreover, the GPSC had not received any requisition from the State Government for regular recruitment. The State Government, therefore, resorted to the practice of issuing an advertisement for filling up the said posts on contractual basis for a period of 11 months or till the regularly selected candidates by the GPSC are available. It may be noted that the Division Bench of this Court, in the judgment dated 07.09.2011, passed in Letters Patent Appeal No.2986/2010 and connected matters, was dealing with an identical

situation. In the said judgment, the Division Bench has directed the State Government to take steps to fill up the remaining 1106 vacant posts and any other vacancies that may have arisen of Assistant Professor/Lecturer in Government Engineering Colleges and Government Polytechnics. The State Government was directed to forward its requisition to the GPSC on an earlier date. The requisition pursuant to the said judgment of the Division Bench has been sent only on 07.08.2013, after almost two years.

23. As noted above, in the intervening period after the passing of the judgment by the Division Bench, and the requisition sent by the State Government to the GPSC, the State Government issued an advertisement for filling up the posts of Assistant Professors/Lecturers in Government Engineering Colleges and Government Polytechnics, on contractual basis for a period of 11 months or till regularly selected candidates are available. It is pursuant to this advertisement in the month of September, 2013, that the petitioners have been appointed. It is an admitted position that as of date, no regularly selected

candidates by the GPSC are available to replace the petitioners. The Government has, therefore, decided to replace the petitioners with another set of contractual employees, on the same terms and conditions as the petitioners; meaning thereby that temporary/ad-hoc employees such as the petitioners are sought to be replaced by another set of temporary/ad-hoc employees, instead of by regularly selected candidates.

24. It may be made clear, at this stage, that the appointment of the petitioners, being of a contractual nature, does not confer any right upon them to the posts against which they have been appointed, even though they may be vacant posts. In **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, the Supreme Court has observed as below :

"47. 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 recognized by the relevant rules or procedure, he is aware 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 concerned cases, 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."

25. Keeping this position of law in mind, it may be noticed that in the present case, the petitioners are not seeking regularization or confirmation against the posts they are occupying on a contractual /temporary basis. It has been conceded on behalf of the petitioners that they have no permanent right against these posts. That the petitioners have not claimed any right to continue in service once regularly selected candidates by the GPSC are available. The scope of this petitions, therefore, is narrowed down to the extent that the petitioners have challenged the action

of the State Government in seeking to terminate their services in order to replace them with another set of ad-hoc/temporary/ contractual employees, whose terms and conditions would be identical to those of the petitioners. The issue for determination before this Court would be whether the action of the State Government in replacing the petitioners who are temporary employees by another set of temporary employees, is sustainable in law, or not.

26. In **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, the Supreme Court has referred to the principles of law laid down by a Bench of three Hon'ble Judges of the Supreme Court in **State of Haryana and others Vs. Piara Singh and others (Supra.)**. The relevant quotations from the judgment is reproduced hereinbelow :

"25. This Court then concluded in paras 45 to 49: (SCC p.152)

"45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to

replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. **If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.**

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the

appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here - can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of Piara Singh

is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."
(emphasis supplied)

27. It may be noted that in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, the Constitution Bench of the Supreme Court has not interfered with, or diluted the principles of law, enunciated in the case of **State of Haryana and others Vs. Piara Singh and others (Supra.)** to the effect that an ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee, but must be replaced only by a regularly selected employee, so as to avoid arbitrariness on the part of the appointing authority. The Constitution Bench did not agree with the directions made in the case of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, as contained in paragraph-50 of the

said judgment, regarding a Scheme for regularization of the services of temporary employees to be prepared by the State Government. The principle of law enunciated in the judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, regarding ad-hoc appointees, as reproduced in paragraph-25 of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, has not been interfered with by the Constitution Bench in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**. Hence, the principle of law that an ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee, still holds good. The appointing authority, in this case the State Government, must resort to the procedure of appointing regularly selected candidates. This process, though underway, will take almost a year for completion, if not more. There is no valid reason for the State Government to bring in another batch of temporary employees by terminating the services of the petitioners by resorting to continued ad-hoc appointments.

28. This Court has carefully perused the judgments in the case of **Secretary, State of Karnataka and others Vs. Umadevi (2) and others (Supra.)** and **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)** as well as the judgment in **Official Liquidator Vs. Dayanand and others (Supra.)** and **Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmchari Sanghatana (Supra.)**. In the case of **Secretary, State of Karnataka and others Vs. Umadevi (2) and others (Supra.)**, a reference was made to a Larger Bench of the Supreme Court regarding the issue whether employees appointed by the State or its instrumentalities on temporary or casual basis, or on daily-wage, have a right to approach the High Court for issuance of a Writ of Mandamus directing that they may be made permanent or absorbed in the posts on which they are working. In paragraph-26 of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, the Constitution Bench of the Supreme Court did not approve of the principles of law laid down in paragraph-50 of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, to the

extent that directions issued to the States to prepare a scheme for regularization of the temporary or casual or daily-wage workers. The reference to the Constitution Bench was regarding regularization of such employees and to that extent the principles of law laid down in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, have been overruled by **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, in paragraph-50 regarding touching upon the regularization of temporary/casual workers and daily-wagers have been overruled. However, the principle of law enunciated in the judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, that ad-hoc employees should not be replaced by another ad-hoc employees has not been overruled. The judgment of **State of Haryana and others Vs. Piara Singh and others (Supra.)**, as a whole, has not been overruled and the principles of law laid down to the effect that ad-hoc employees should not be replaced by other ad-hoc employees still holds good.

29. In **Official Liquidator Vs. Dayanand and others**

(Supra.), a reference is made to **State of Haryana and others Vs. Piara Singh and others (Supra.)**, only with regard to regularization of the services of temporary employees and paragraph-26 of the judgment in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, has been reproduced.

30. In **Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmchari Sanghatana (Supra.)**, a reference to **State of Haryana and others Vs. Piara Singh and others (Supra.)**, has been made in the context of regularization only. Moreover, both the judgments in **Official Liquidator Vs. Dayanand and others (Supra.)** and **Maharashtra State Road Transport Corporation vs. Casteribe Rajya Parivahan Karmchari Sanghatana (Supra.)** are of three and two Hon'ble Judges, respectively, whereas the judgment in **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, has been rendered by five Hon'ble Judges of the Supreme Court. In paragraph-54 of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, the Supreme Court has held as below :

"54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

31. The principles settled in the decision of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, are those pertaining to regularization of temporary/casual/daily-wage workers. Having regard to the above, this Court is inclined to agree with the submissions advanced by learned Senior Counsel for the petitioners that the principle of law laid down in **State of Haryana and others Vs. Piara Singh and others (Supra.)**, that ad-hoc employees ought not to be replaced by another set of ad-hoc employees, but only by regularly selected candidates, has not been diluted and still holds good.

32. A similar view has been taken by the Division Bench in the judgment dated 07.09.2011, passed in Letters Patent Appeal No.2986/2010, and connected matters. When the appeals were being heard, initially, the Division Bench passed an interim order dated

24.03.2011, whereby it was directed that till the posts are filled up by regularly selected candidates, the Assistant Professors/Lecturers be not disturbed. These directions have attained finality in the final judgment dated 07.09.2011. While disposing of all the Letters Patent Appeals, the Division Bench has made it clear that till regular appointments are made, the ad-hoc Lecturers/Assistant Professors, who were the respondents therein would be continued. The State Government was directed to continue the interim arrangement, as ordered by the Division Bench in its order dated 24.03.2011. This judgment has attained finality, as there is no further challenge to it. It has been pointed out by the learned Assistant Government Pleaders that the State Government has not only accepted the judgment, but has also implemented it. The ad-hoc Assistant Professors/Lecturers, who were before the Division Bench in those cases were continued and are still continuing, till such time as regularly selected candidates are not available. Even while reiterating that the petitioners cannot have any claim to the posts after the regularly selected candidates by the GPSC are available, this Court fails

to understand why the State Government, which has implemented the judgment of the Division Bench in the case of identically situated Assistant Professors/Lecturers, has once again resorted to the same practice that was disapproved by the Division Bench earlier. The very existence of contractual/temporary/ad-hoc appointments for a long period of time would go to show that there is a genuine requirement for filling up the posts on a regular basis. The Constitutional Scheme of Public appointments, as has been expounded in the **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**, mandates that appointments to regular posts should be made by following the proper procedure. Frequent or continuous resort to ad-hocism ought not be made in the interest of the State, Institution, or, in the present case, the academic future of the students. Making appointments of Assistant Professors/Lecturers on ad-hoc basis for a term of eleven months and thereafter replacing them with another set of ad-hoc Assistant Professors/Lecturers, again for a short period of eleven months, and to continue this process over and

over again until regularly selected candidates are available, would definitely be detrimental to the interest of the students. This is an aspect that deserves consideration. The object of appointment of Assistant Professors/Lecturers is to teach the students of Government Engineering Colleges and Government Polytechnics. If a method is resorted to that would undermine the continuity of the studies of the students and, thereby, lower the quality of education that they receive, it would fail to have any rational nexus to the object sought to be achieved. Besides this, the services of the petitioners are sought to be terminated during mid-term, which would further adversely affect the studies of the students.

33. It appears from the submissions made on behalf of the GPSC that the requisition for filling up regular posts has come from the State Government on 07.08.2013. The procedure for regular recruitment is still underway and, as per the submissions made by Mr.D.G.Shukla, learned advocate for the GPSC, it may take another 10 to 12 months to complete the same. It may be true that the petitioners do not have any permanent right to the posts that they are occupying

on ad-hoc basis; however, it is difficult to understand what rational purpose would be served in terminating the services of the petitioners and engaging fresh ad-hoc persons for eleven months. Such action would be in contradiction to the principle of law laid down in the case of **State of Haryana and others Vs. Piara Singh and others (Supra.)** as quoted in the judgment of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others (Supra.)**. Moreover, it would lead to multifarious litigation, as is already the case.

34. As has been submitted on behalf of the petitioners, the challenge in the present petitions is limited only to the extent of the termination of the services of the petitioner to make way for another set of ad-hoc employees. It does not extend to those Assistant Professors/Lecturers, who may have been appointed in the Government Engineering Colleges and Government Polytechnics, pursuant to the advertisement dated 15.08.2013, or to any other vacant posts.

35. Accordingly, as a cumulative effect of the above discussion and for reasons stated hereinabove, and in

view of the judgment of the Division Bench dated 07.09.2011 passed in Letters Patent Appeal No.2986/2010 and connected matters, the petitions are partly-allowed to the extent that the services of the petitioners as Assistant Professors/Lecturers on temporary/ contractual basis in Government Engineering Colleges and Government Polytechnics shall not be terminated, till regularly selected candidates by the GPSC are available.

36. It is clarified that this judgment shall not confer any right upon the petitioners to the posts on which they are working, after the regularly selected candidates through the GPSC are available.

37. Rule is made absolute, to the above extent.

(SMT. ABHILASHA KUMARI, J.)

Gaurav+