

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NOS.467 AND 14658 OF 2020

COMMON ORDER:

The relief claimed in both the writ petitions is as follows:

“W.P.No.467 of 2020

To issue Writ of Mandamus declaring the impugned G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 of the 1st Respondent as arbitrary, illegal, discriminatory, void and without jurisdiction and contrary to TTD Employees Service Rules, 1989 issued in G.O.Ms.No.1060 Revenue (Endowment-I) Department dated 24.10.1989 and set-aside the same and also declare the action of the respondents in not absorbing or not regularizing the services of the petitioners as Librarian in the existing vacancies under the jurisdiction of the 2nd respondent as arbitrary, illegal, discriminatory and unconstitutional, violating Articles 14, 16 and 21 of the Constitution of India and issue consequential directions directing the respondents to forthwith absorb/regularize the services of the petitioners as Librarians in the existing vacancies before filling up the existing post of Librarians either by way of direct recruitment or by way of promotion or any other method and further direct the respondents to continue the petitioners as Librarians under the jurisdiction of the 2nd respondent till regularizing/absorbing their services of the petitioners as Librarians and also restrain the respondents from implementing G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019, insofar as it relates to the extent of 5 posts of Librarian which are being held by the petitioners.”

W.P.No.14658 of 2020

To issue writ of Mandamus declaring the impugned G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 of the 1st respondent and the consequential proceedings in ROC No.TTD-80021(31)49/2018-DEO-SEC-TTD dated 26.07.2020 issued by the 3rd respondent to the extent of appointing the 6th respondent as Librarian in place of the petitioner in the 5th respondent college as illegal, arbitrary, violative of principles of natural justice, contrary to the service rules of the T.T.D and also Articles 14 & 16 of the Constitution of India, consequently set-aside the impugned G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 of the 1st respondent and the consequential proceedings of the 3rd respondent dated 26.07.2020 to the extent of the petitioner and further direct the respondents to continue the petitioner as Lecturer in Library Science in the 5th respondent college.”

As the relief claimed in both the writ petitions is one and the same, I find it expedient to decide both the petitions by common order.

For the sake of convenience, the petitioners in both the writ petitions will be referred as petitioners and the respondents will be referred as arrayed in W.P.No.467 of 2020.

The factual matrix of both the cases is that, the second respondent/Executive Officer, Tirumala Tirupati Devasthanams, Tirupati, issued paper publication on 09.7.2007 notifying certain vacancies, including Librarian to be filled up from the eligible and qualified candidates for the post of 'Lecturers' on 'contract basis' for the academic year 2007-2008. The petitioners being qualified persons, applied for the post of Librarian. In the said notification, it is specifically stated that one vacancy to the post of Librarian is existing. The petitioners having possessed requisite qualification were called for interview and they were selected as Librarians on contract basis on consolidated amount of Rs.6,000/- per month, fixing specific period of appointment. The petitioners were appointed in the clear vacancy of Librarian, which is a sanctioned post, and the petitioners are discharging their duties as Librarians to the utmost satisfaction of his superiors. In view of requirement of their services in the Educational Institutions of Tirumala Tirupati Devasthanams (for short 'T.T.D'), the term of the petitioners is being extended from time to time.

While the things stood thus, the State Government issued orders vide G.O.Ms.No.12 Finance (HR.I-Plg.& Policy) Department

dated 28.01.2019 (for short 'G.O.Ms.No.12 dated 28.01.2019) extending the minimum time scale to the contract employees working in various government departments with effect from 01.04.2019 onwards. T.T.D also adopted the guidelines issued under G.O.Ms.No.12 dated 28.01.2019. Accordingly, all the contract employees working in T.T.D Educational Institutions have been drawing minimum time scales.

Satisfied with the performance of these petitioners, the Board of T.T.D extended the contract period of these petitioners as Librarians. The Government issued G.O.Rt.No.187 Higher Education Department dated 18.11.2019 through which government accorded permission to the Special Commissioner of Collegiate Education, A.P. Vijayawada for continuation of contract period of 12 months with 10 days break from the academic year 2019-2020 to the contract lecturers working in Government Degree Colleges in the State of Andhra Pradesh. The respondents by following the guidelines issued by the Government, extended the term of office of the contract employees who are working in the colleges under the control of T.T.D. Accordingly, the petitioners are discharging their duties as Librarians on the extended contract period from the date of their appointment. In fact, the respondents did not issue any extension order in continuation of the contract employees for the academic year 2020-2021, but in view of the requirement of the services of the petitioners, they were allowed to discharge their duties for the academic year 2020-2021.

While so, the Government thought fit to constitute a working committee to examine the matter of regularization of the services of contract employees working in the Government departments and other allied matters and issued G.O.Rt.No.2657 General Administration (Cabinet-I) Department dated 26.11.2019. In the said Government Order, it is observed that the State Government constituted group of ministers vide G.O.Rt.No.1567 dated 10.07.2019 for examining the matter of regularization of services of contract employees working in Government Department and furnish its recommendations to the Government. Based on the report of the Group of ministers, the Government formed working committee under the Chairmanship of Chief Secretary to submit a report by 31.03.2020 for regularization of the services of contract employees who are working in the Government Departments.

G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 (for short 'G.O.Rt.No.1411 dated 28.11.2019) was issued based on the request made by the second respondent to fill up six Librarian and six Graduate Librarian posts under recruitment by transfer in T.T.D Educational Institutions as one time measure for the academic year 2019-2020 instead of filling up them through the promotional channel or by way of Direct recruitment. The Government accepted the proposal of the second respondent and ordered to fill up six Librarian and six Graduate Librarian posts in T.T.D Educational Institutions as one time measure for the academic year 2019-2020 instead of filling them up through the promotional channel or by way of direct

recruitment. Accordingly, a circular was issued calling applications from the eligible employees for filling up the non-teaching posts of Librarian and Librarian (Graduate) in Tirumala Tirupati Devasthanams Employees Service Rules, 1989, (hereinafter 'T.T.D Employees Service Rules') issued vide G.O.Ms.No.1060 dated 24.10.1989 through recruitment by transfer as one time measure only. Hence, the petitioners requested to set-aside G.O.Rt.No.1411 dated 28.11.2019 and consequential proceedings issued by the second respondent, as they are illegal and contrary to the T.T.D Employees Service Rules issued under G.O.Ms.No.1060 dated 24.10.1989 & G.O.Ms.No.311 Revenue (Endowments) dated 09.04.1990.

The specific grounds urged in W.P.No.14658 of 2020 are as follows:

- a) G.O.Rt.No.1411 dated 28.11.2019 is not in exercise of the power under Article 309 of the Constitution of India and it is only an Executive Instruction and issue of such Government Order without amending T.T.D Employees Service Rules is illegal and arbitrary.
- b) It is contended that the petitioners being the contract employees having been paid their minimum time scale payable to Librarian and Librarian (Graduate) and appointed in the existing vacancies by following necessary procedure for selection of regular Librarians are entitled to regularization of their services. Issue of such Government Order is contrary to the T.T.D Employees Service Rules and

consequential proceedings, denude these petitioners for selection in the institutions of T.T.D as illegal and arbitrary.

- c) The petitioners further contended that, G.O.Rt.No.1411 dated 28.11.2019 issued by the State Government, accepting the proposal made by the Executive Officer, T.T.D to fill up six Librarians and six Librarians (Graduate) under recruitment by transfer to T.T.D Educational institutions as one time measure for the academic year 2019-2020 instead of filling up the said vacancies through direct recruitment or by promotional channel is illegal and in deviation of the procedure prescribed under the T.T.D Service Rules issued under G.O.Ms.No.1060 Revenue (Endowments-I) dated 24.10.1989 & G.O.Ms.No.311 Revenue (Endowments) dated 09.04.1990. Hence, prayed to set-aside G.O.Rt.No.1411 dated 28.11.2019 and consequential proceedings, declaring the same as illegal and arbitrary.

The specific grounds in addition to the grounds mentioned hereinafter, urged in W.P.No.467 of 2020 are as follows:

- a) It is specifically contended that, there cannot be ad-hocism or temporary forever and in the event of any employee working against the regular post for sufficiently long period, that too, after following regular procedure for making regular selections, such employees' cases shall be considered for regularization and cannot continue only on contract basis or

temporary basis. Therefore, T.T.D which is an independent institution having its own source of income and which is able to give financial assistance to the State Government ought not have adopted such kind of appointments on contract basis only to deprive regular salary attached to the post in the guise of contract appointment which is like acting any private institution, inasmuch as the 2nd respondent is a State under Article 12 of the Constitution of India and these petitioners are entitled for regularisation/absorption in the department, though they are working on contract basis, taking into consideration of their long tenure as Librarians on contract basis.

- b) It is further contended that, issuing G.O.Rt.No.1411 dated 28.11.2019 accepting the proposal of the Executive Officer, T.T.D and ordering him to fill-up the posts of Librarians and Librarians (Graduate) posts under recruitment by transfer for T.T.D Educational Institutions as one time measure for the academic year 2019-2020, instead of filling up the said posts through promotional channel is nothing but depriving the petitioners of their livelihood and that the petitioners were appointed in the regular existing vacancies and thereby they are entitled for regularization of their services.

Finally, the petitioners sought direction to set-aside G.O.Rt.No.1411 dated 28.11.2019 as it is illegal, arbitrary and violative of Articles 14, 21 and 309 of the Constitution of India, while directing Respondent Nos. 2 and 3 to absorb these

petitioners as Librarians and Librarians (Graduate) in the Educational Institutions of T.T.D.

Respondent Nos. 2, 4 to 9 in W.P.no.467 of 2020 filed counter affidavit in both the writ petitions, denying material allegations, while admitting the appointment of these petitioners on contract basis for ten months in a year initially on payment of Rs.6,000/- and subsequently the contract was extended from time to time also extended minimum time scale to these petitioners in view of the Government orders.

T.T.D Employees Service Rules are issued pursuant to G.O.Ms.No.1060 dated 24.10.1989 which deals with method of recruitment for the post of Librarian which is as follows:

1. By Direct Recruitment;
2. By promotion from Librarian (Graduate). For the post of Graduate Librarian it is by Direct Recruitment only. It is submitted that in order to provide an opportunity to the qualified employees of TTD and to resolve the large persistent demand of the Employees of TTD, an amendment was proposed vide Res.No.285 dated 24.07.2018 to the Service Rules of TTD Employees issued in G.O.Ms.No.1060 Revenue (Endowment-I) Department dated 24.10.1989 as mentioned in the table below:

01	Librarian	By Direct Recruitment 50% of the cadre strength	(i) Must possess PG degree in I or II class (ii) Degree of B.Li.Sc or equivalent degree.
		By Promotion 25% of the cadre strength	Must have not less than 5 years of service as Graduate Librarian

		By Transfer 25% of the cadre strength (proposed amendment)	(i) Must have not less than 5 years of service in any cadre of TTD services. (ii) Must possess PG degree in I or II class (iii) Degree of B.Li.Sc or equivalent degree.
02	Graduate Librarian	By Direct Recruitment (70%)	(i) Must have passed the degree of B.A, B.Com, or B.Sc, of recognized University (ii) Must possess a Degree in Library Science or Diploma in Library science recognized University
		By Transfer 30% of the cadre strength (proposed amendment)	(i) Must have not less than 5 years of service in any cadre of TTD services (ii) Must have passed the degree of B.A, B.Com, or B.Sc, or equivalent of recognized University (iii) Must possess a Degree in Library Science or Diploma in Library science recognized University

T.T.D wanted to recruit the Librarians and Librarians (Graduate) and proposed for amendment of Rules to fill those posts by transfer from the Educational Institutions of T.T.D as shown in the table. But, after lot of correspondence, the second respondent sent a proposal for filling up those posts by transfer of employees from the Educational Institutions under the control of T.T.D and accordingly, G.O.Rt.No.1411 dated 28.11.2019 was issued as one time measure for the academic year 2019-2020. Thus, the respondents admitted about issue of G.O.Rt.No.1411 dated 28.11.2019 as one time measure for filling up the posts of Librarians and Librarians (Graduate) by transfer.

The petitioners are contract Librarians in T.T.D Educational Institutions and their appointment is purely temporary on contract basis. There are no rules for regularization their services in the post in which they are working. Therefore, they cannot claim regularization of their services in the educational institutions under the control of T.T.D. The petitioners executed a contract in

favour of T.T.D. Among others, it contains the following two conditions:

- a) That the contract faculty agrees that, he/she is fully aware of the fact that his/her service is not being taken to fill any vacancy either temporary or permanent basis, that he/she will be paid a consolidated amount during the contract period as per norms, that his/her contract shall automatically comes to an end on expiry of the said period or on report of a regular lecturer in that subject whichever is earlier.***
- b) That he/she shall not indulge in any activity detrimental to the interest of the party of the TTD.***

The respondents submitted in the counter that, the petitioners have violated the above two conditions and thereby, they are not entitled to claim any relief in these writ petitions. It is also contended that, G.O.Rt.No.1411 dated 28.11.2019 was issued by the State Government based on the resolution passed by the Board of T.T.D and proposals submitted to the Government for proposing amendment. Later, after lot of correspondence between the Government and the second respondent/Executive Officer, TTD, G.O.Rt.No.1411 dated 28.11.2019 was issued by the Government, only for limited period of one year as a one time measure and not intended to deprive these petitioners or any other persons for being appointed as Librarians or Librarians (Graduate).

The respondents contended that, G.O.Rt.No.1411 dated 28.11.2019 was issued in view of the resolution passed by the Board of TTD, within the limitations prescribed under the Rules, therefore, it is not in violation of any of the Rules and thereby, the

Government Order and consequential proceedings cannot be set-aside.

It is undoubtedly true that, the second respondent/ Executive Officer, TTD by following the Government Orders issued from time to time, posts of Librarian and Librarian (Graduate) which are vacant for the posts for the past few years, which could not be filled-up due to ban imposed by the Government on recruitment. Further, more clarifications were sought for by the Government regarding local category posts. Therefore, TTD has engaged Librarians on contract basis and merely because the services of these petitioners were engaged on contract basis, they are not entitled to claim regularization/absorption in the said post.

It is further submitted that the contract Librarians, except Sri Y. Vikram Sagar, Contract Librarian working at SPW Junior College, Tirupati were engaged in TTD without implementation of rule of reservations and without any specific selection procedure and the petitioners were engaged first in junior/music/oriental colleges and then some of them were shifted to degree colleges due to necessity on account of retirement of regular Librarians. Further, in cases where contract Librarians were engaged through notification, the notification was only for appointment on contract basis. Thus, the contention of the petitioners that they were appointed on contract basis after following regular process has to be read contextually and the averments made by the petitioners are misleading. Further, while offering appointment on contract basis, the petitioners were specifically informed that their

appointment is on contract basis till regular recruitment is made by management and the contractual appointment does not in any manner influence the selection process for regular appointment and does not guarantee regular service on the basis of the contract appointment and the Principal may terminate their appointment at any time without any notice and without assigning any reason thereof. The petitioners were also informed to report for duty if they accept the terms and conditions laid down by TTD. Having agreed, the petitioners joined the post of Librarians on contract basis. The respondents contended that, when the petitioners agreed to the terms and conditions, they are estopped from pleading any other contentions, contrary to the terms and conditions of the contract and thereby, they are not entitled to claim any relief in the writ petitions.

The respondents admitted about extension of minimum time scale to the employees appointed under contract basis, but they are not entitled for regularization because, benefit of minimum time scale is extended to them from 01.04.2019 as per G.O.Ms.No.12 dated 28.01.2019 and as per proceedings RocNo.80021(31)/13/2019-D2-DEO-SEC dated 31.10.2019. It is contended that, there are no rules permitting regularization/absorption of these petitioners and thereby they are not entitled to the relief claimed for. Further, the petitioners were extended benefits as fixed by the government to the contractual employees and they are not entitled to claim regularization /absorption in the said posts. Even though the management does not receive any

financial aid from the government, it has to follow the service rules fixed by the Government, governing the service conditions of TTD employees and in the absence of TTD Employees Service Rules, the petitioners are not entitled to claim any relief in these writ petitions. It is further contended that, G.O.Rt.No.1411 dated 28.11.2019 and consequential proceedings issued by the Executive Officer, TTD are not hit by Articles 14, 19 and 309 of the Constitution of India and it is in consonance with the decision taken by the TTD Board, thereby, the contention of these petitioners is without any merit and the same cannot be sustained either on fact or law and requested to dismiss the writ petitions.

Heard Sri P.V. Krishnaiah and Sri K. Koutilya, learned counsel appearing for the writ petitioners and Sri A. Sumanth, learned Standing Counsel appearing for Tirumala Tirupati Devasthanams, Tirupati, in detail.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 is in violation of TTD Service Rules. If so, whether G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 is illegal, arbitrary, violative of statutory rules framed by the TTD and liable to be set-aside?***
- 2. Whether the petitioners being contract employees are entitled for absorption/regularization for the post of Librarian and Librarian (Graduate) from the date of their appointment with backwages in terms of TTD Service Rules?***

P O I N T No.1

All these petitioners were engaged by the second respondent on contract basis and the contract is between the petitioners and second respondent. The appointment dates of the petitioners who were engaged on contract basis is as follows:

S.No	Name	Date of appointment
1	P. Devakanth	03.10.2007
2	K.C. Muthyclaiah Chetty	01.12.2007
3	D. Tulasi Ram	01.2008
4	M. Venugopal Naik	01.02.2008
5	Y. Vikram Sagar	12.09.2016
6	Dr. N. Kalpalatha	17.01.2008

The second respondent admittedly issued a notification for filling up of vacancies in the cadre of Librarian by issuing Notification dated 09.07.2007 for the academic year 2007-2008, inviting applications from the eligible candidates, fixing the last date for applications as 31.07.2007.

The very first line of the notification dated 09.07.2007 reads as follows:

“For the academic year 2007-2008 the below mentioned vacancies are to be filled for the following posts from the required eligible and qualified candidates **for the post of “Lecturers” on “contract basis”**

Thus, the notification is very specific that the appointment of Lecturers is on contract basis. In pursuance of the notification, the petitioners were appointed on contract basis after following certain procedure for selection and issued proceedings appointing these petitioners initially on monthly consideration of Rs.6,000/- i.e. salary for their service. Though the initial contract has expired, the

contract is being extended from time to time and finally it was extended for the year 2019-2020 engaging the services of the petitioners on contract basis only for ten months, extended by minimum time scale to these petitioners. As such, the service contract was subsisting as on the date of filing the writ petitions and entitled to serve as Librarians and Librarians (Graduate) in terms of the proceedings issued by the second respondent dated 03.06.2019.

As on date, the petitioners are continuing in contract employment as Librarians or Librarians (Graduate) for the academic year 2019-2020, but no material to establish that the contract was extended for the year 2020-2021. After expiry of the contract period, the same was extended vide proceedings dated 03.06.2019, the academic year 2019-2020 expired by the end of March, 2020 and as such there was no subsisting contract of employment between the petitioners and the second respondent and there was no direct relationship between them as employee and employer as on today.

The main endeavour of the petitioners in both the writ petitions is that, the second respondent issued a notification for recruitment of Librarians and Librarians (Graduate) on transfer, in pursuance of G.O.Rt.No.1411 dated 28.11.2019 which is not authorized as per TTD Employees Service Rules. Therefore, the notification in G.O.Rt.No.1411 dated 28.11.2019 is contrary to TTD Employees Service Rules, governing the eligibility, process of recruitment, process of promotion and other service conditions of

employees working in the educational institutions under the control of the second respondent. TTD Employees Service Rules were framed vide G.O.Ms.No.1060 dated 24.10.1989, they govern the eligibility, selection process, promotions and service conditions of employees working in the educational institution working under the control of TTD.

Annexure-I of the TTD Employees Service Rules prescribed certain qualifications for the post of Librarian and Librarian (Graduate) which are non-teaching posts in educational institutions and they are as follows:

01	Librarian	By Direct Recruitment	(i)	Must possess a post graduate degree in I or II class from a recognized university and a degree of B.L.Sc, or equivalent degree thereto.
		By Promotion	(ii)	Must possess a fair knowledge of Sanskrit
02	Graduate Librarian	By Direct Recruitment	By promotion from Librarian (graduate)	
			(i)	Must possess a fair knowledge in Sanskrit
			(ii)	Must have not less than 5 years of service as Graduate Librarian
			(i)	must have passed the Degree of B.A, B.Com or B.Sc of a recognized University.
			(ii)	Must possess a Degree in Library Science or a Diploma in Library Science from any recognized University

The post of Librarian can be filled in two modes i.e. by Direct Recruitment and by Promotion. Whereas, the post of Librarian (Graduate) must be filled up by direct recruitment only as shown in the table referred supra.

As per the notification impugned in the writ petitions, G.O.Rt.No.1411 dated 28.11.2019, the mode of recruitment of

Librarian and Librarian (Graduate) is totally changed. The second respondent/Executive Officer, TTD initially requested the government for amendment of Rules for recruitment of Librarians by transfer to an extent of 25% to Librarian and 30% to Librarian (Graduate) in educational institutions under the control of TTD. But, later, certain correspondence took place between the second respondent and the Government and finally, on examination of the matter, the proposal made by the second respondent was accepted and issued G.O.Rt.No.1411 dated 28.11.2019 to fill up six Librarian posts and six Librarian (Graduate) posts under recruitment by transfer in the educational institutions under the control of TTD, as one time measure, only for the academic year 2019-2020, instead of filling them up through promotional channel. The relevant paragraph in G.O.Rt.No.1411 dated 28.11.2019 reads as follows:

“3) Government after careful examination of the matter hereby accept the proposal of the Executive Officer, Tirumala Tirupathi Devasthanams and order to filling up of 6 Librarian and 6 Graduate Librarian posts under recruitment by transfer in Tirumala Tirupathi Devasthanams educational institutions as one-time measure only for the academic year 2019-2020 instead of filling them up through the promotion channel.”

The mode of recruitment of Librarian under the TTD Employees Service Rules is limited to direct recruitment and promotion, whereas, recruitment of Librarian (Graduate) is only by direct recruitment. G.O.Rt.No.1411 dated 28.11.2019 appears to have been issued for certain extraneous reasons and the petitioners could not bring on record the hidden reason or lurking interest behind issue of G.O.Rt.No.1411 dated 28.11.2019. Unless

the TTD Employees Service Rules are amended, the State Government cannot permit the Executive Officer, TTD to fill up the post of Librarian and Librarian (Graduate) by transfer in TTD educational institutions as one time measure for the academic year 2019-2020.

No doubt, the posts of Librarian and Librarian (Graduate) are vacant since 2007-2008 and vacancies were filled up engaging the services of these petitioners on contract basis till the academic year 2019-2020 i.e approximately for a period of 13 years and allowed these petitioners to work on contract basis. But, all of a sudden, the second respondent intended to fill up those vacancies by amending the TTD Employees Service Rules for unknown reasons. The State did not amend the TTD Employees Service Rules and started correspondence with the second respondent. Ultimately, at the instance of the State Government, the second respondent addressed a letter to permit the second respondent to fill up the vacancies of six Librarian and six Librarian (Graduate) in the educational institutions under the control of TTD. Accepting the request, the State Government issued G.O.Rt.No.1411 dated 28.11.2019 permitting the second respondent/Executive Officer, TTD to recruit six Librarian and six Librarian (Graduate) by transfer only as one time measure for the academic year 2019-2020, without amending the substantive Rules governing the service conditions of employees working in the educational institutions under the control of second respondent/Executive Officer, TTD. Therefore, G.O.Rt.No.1411 dated 28.11.2019 cannot

be upheld unless substantive rules are amended by exercising power under Article 309 of the Constitution of India, governing the service conditions of employees working under the control of the second respondent.

The correspondence between the State Government and the second respondent is suffice to draw an inference that G.O.Rt.No.1411 dated 28.11.2019 is tainted with malafides. Even otherwise, the State Government is expected to pass such a Government Order following the TTD Employees Service Rules. But, totally in contravention of the procedure prescribed under the TTD Service Rules, vide G.O.Ms.No.1060 dated 24.10.1989 and permitting the second respondent to recruit six Librarian and six Librarian (Graduate) on transfer, as one time measure. The Court can infer reasons for issuing such order changing the procedure for recruiting Librarian and Librarian (Graduate) based on the correspondence of the second respondent and the State Government. Issue of G.O.Rt.No.1411 dated 28.11.2019 as one time measure itself is indicative of malafides. Issue of such Government Order is nothing but fraud on power or abuse of power.

As discussed above, G.O.Rt.No.1411 dated 28.11.2019 is issued not only in violation of TTD Employees Service Rules notified vide G.O.Ms.No.1060 dated 24.10.1989 and tainted with malafides, besides abuse of power. Hence, G.O.Rt.No.1411 dated 28.11.2019 is declared as illegal, arbitrary and in violation of

Rule 9(2) of TTD Employees Service Rules and Annexure-I of TTD Service Rules, and the same is liable to be set-aside.

Accordingly, the point is answered in favour of the petitioners and against the respondents.

P O I N T No.2:

The petitioners in both the writ petitions claimed absorption /regularization of their services under the second respondent, as they are working in the same post for the last more than 13 years.

The main endeavour of the petitioners is that, when once the petitioners are engaged on contract basis, their legitimate expectation is absorption/regularization into service. Whereas, the learned Standing Counsel appearing for TTD contended that, when the order of their appointment is made clear that the petitioners have no right to claim absorption/regularization into services, on the other hand, if their acts are prejudicial to the interest of the second respondent, their services can be disengaged. When the contract of the petitioners is only for ten months for every year, the petitioners are not entitled to claim regularization of services, since the contract was entered into for rendering services on payment of consideration by way of remuneration, after satisfying the requirements to constitute a valid contract. Such contract was entered into by the petitioners out of free volition and not under any compelling circumstances, as such, they are not entitled for absorption.

During hearing, learned counsel for the petitioners contended that, when the petitioners were appointed after following necessary selection process for appointment of regular employee in the existing vacancies, they are entitled to claim absorption into services in terms of the principle laid down by the Constitutional Bench of the Apex Court in **State of Karnataka v. Uma Devi**¹ and requested to direct the respondents to regularize/absorb the services of the petitioners from the date of their initial appointment.

There is a basic difference between contractual employment and regular employment. An employment contract is an agreement that covers the working relationship of an employer and an employee. It allows both parties to clearly understand their obligations and the terms of employment. More specifically, an employment contract can include salary or wages, schedule, duration of employment, general responsibilities, confidentiality, communications, benefits, future competition etc. A written contract is a great way to clearly define the role, the responsibilities, and the benefits and to prevent any confusion. Upon careful reading of the terms and conditions, the parties shall enter into contract of employment with free consent and for consideration. Therefore, such contract of employment requires to satisfy the ingredients of ordinary contract as defined under the Indian Contract Act.

¹ (2006) 4 SCC 1

However, in certain compelling circumstances, with legitimate expectation of regularization or absorption and due to lack of employment in the State, the prospective candidates are entering into contract of employment and rendering services on meagre amount of agreed consideration as salary or wage. It is one type of exploitation of services of employee by the employer.

In view of these specific contentions raised by the petitioners it is appropriate to advert to the law declared by the Apex Court and other Courts to order regularization of services of the petitioners. The basis for this claim is the principle laid down by the Apex Court in **State of Karnataka v. Uma Devi** (referred supra). The ratio laid down by the Constitutional Bench of the Apex Court can be analyzed as follows:

(I) The questions to be asked before regularization are:-

(a)

(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire),

(ii) is there a vacancy,

(iii) are the persons qualified persons and

(iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular

recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution."

If the appointment on contract basis or otherwise satisfies the above requirements, the Court can order regularization or absorption of services of contract employees. But, the Court observed that there is no legitimate expectation of contractual employees or work charged employees to get regularization. The Supreme Court has categorically observed that people who take employment with open eyes for a contractual period or for a specific project cannot claim regularization and there is no equity in their favour inasmuch as the equity is in favour of millions who have been waiting for public employment through the regular recruitment process outweighs the equities claimed by the limited number of employees. (vide **Indu Munshi v. Union of India**²).

² WP(C) No.2574 of 2010 dated 05.04.2013

In **Surendra Kumar & ors. V. Greater Noida Industrial Development Authority & ors**³, the Supreme Court considered the scope of regularization of contractual employees. In the facts of the above case, the respondent published an advertisement on 20.11.2002 for engagements to the post of Assistant Manager. The Appellants, engaged on contractual basis, sought regularisation of their service with the Respondent for the advertised post. The high court directed the Respondent to consider the claim of the Appellants for regularisation. A scheme for regularisation of the Appellants was formulated by the Respondent, and the Appellants were appointed to the post vide appointment orders dated 06.08.2010. A subsequent petition by the Appellants for regularisation of service from the date of the advertisement, 20.11.2002, with all consequential benefits is allowed by the Tribunal. The Respondent filed a petition before the High Court against the order. Allowing the petition, the court quashed the grant of retrospective benefits to the Appellants, and also quashed the appointments of the Appellants as ex-facie illegal. The Apex Court concluded that the scheme of regularization of contractual employees was not in vogue and it was only subsequently to 16.04.2003.

In Paragraph 53 of the judgment in **State of Karnataka v. Uma Devi** (referred supra), the Constitutional Bench of the Apex Court observed as follows:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as

³ 2015 (7) SCALE 386

explained in State of Mysore v. S.V. Narayanappa: (1967) 1 SCR 128, R.N. Nanjundappa v. T. Thimmiah: (1972) 1 SCC 409, and B.N. Nagarajan v. State of Karnataka (1979) 4 SCC 507, and referred to in paragraph 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 courts or of tribunals. The question of regularization 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 above referred 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 regularize 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 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 regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

Based on the principle laid down in **State of Karnataka v. Uma Devi** (referred supra), the Apex Court accepted regularization of the contract employees as they were working for more than five years as one time measure, framing a scheme for their regularization while discouraging backdoor appointments. The Apex Court in **Rajnish Kumar Mishra v. State of Uttar Pradesh**⁴ observed as follows:

“As a onetime measure the employer should take steps for regularisation of the services of the employees who had put in service of 10 years or more and had directed regularization of the appellants therein. The learned counsel further submits, that the appeals deserve to be allowed and the impugned order deserves to be quashed and set aside.”

In **Accounts Officer (A&I) APSRTC & Ors v. K. V. Ramana & Ors**⁵, the Division Bench of the Apex Court again by placing reliance on the Constitutional Bench of the Supreme Court in

⁴ (2019) 17 SCC 648
⁵ 2007 ALL SCR 1121

State of Karnataka v. Uma Devi (referred supra), held that, absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees dehors the rules and constitutional scheme of public employment cannot be granted by the Courts. As regards the circular dated 31.3.1998 the same cannot override Article 16 of the Constitution of India, and hence regularization cannot be granted under the said circular. Even if the contract labourers or casual workers or ad hoc employees have worked for a long period they cannot be regularized dehors the rules for selection.

Similar question came up before Jharkhand High Court in **Bharat Coking Coal Ltd. v. Their Workmen, Being Represented**⁶. The facts in the above judgment are that, the Management is that during the period 1973 to 1976, supply of Railway Wagon being erratic, as some time, there used to be no supply of any Wagon or some time as there were excess supply of Wagons, in such a case, the work of loading and unloading was being done by engaging extra labour who were separately enrolled as Casual Wagon Loader, but their names do not find place either in the roll of Permanent Wagon Loader or Casual Wagon Loader. Therefore, according to them, the concerned persons were not entitled to any relief. The learned single Judge of the Jharkhand High Court placed reliance on the judgments of the Supreme Court in **Air India Statutory Corporation v. United Labour Union**⁷ and

⁶ 2005 (2) JCR 269 Jhr

⁷ (1997) 9 SCC 377

Sapan Kumar Pandit v. U.P. State Electricity Board⁸ and finally concluded that, there was no relationship of employer and employee between the management and employees, thereby, the employees are not entitled for regularization in services.

There are conflicting views regarding regularization. However, it is clear from the judgment of the Constitutional Bench of the Supreme Court in **State of Karnataka v. Uma Devi** (referred supra), that if these petitioners were selected based on regular notification and based on regular selection process in the existing vacancies, here, the petitioners are working as contract employees continuously for the last more than 13 years and less than 13 years. However, the contract period was only 10 months in a year. Thus, the service rendered by the petitioners in a year is not continuous contract in service. The petitioners were selected based on notification inviting applications for the post. However, the petitioners did not undergo regular selection process facing competition. Therefore, the petitioners cannot be said to be in service continuously for more than 13 years, as there is an intermittent gap of two months between one contract and other contract period.

No doubt, the contract period is not extended as admitted by the petitioners and the petitioners are allegedly continuing to render service. When once contract is not extended or entered into afresh by TTD, the petitioners cannot be deemed to be in service as on date.

⁸ 2001 AIR SCW 2681

In any view of the matter, regularization is only subject to satisfying the test or principle laid down by the Constitutional Bench of the Supreme Court in **State of Karnataka v. Uma Devi** (referred supra).

The Apex Court in **Yogesh Mahajan v. Professor R.C. Deka, Director, All India Institute Of Medical Sciences**⁹ held as follows:

"6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the Petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the Petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the Petitioner."

Contractual appointment is for a specified period and not entitled to regularization. Grant of extension of tenure based, does not confer status of employee nor can he/she seek regularization of his/her services in absence of any statutory Rule recognizing such right in his/her favour. (vide **Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, Through Its Manager And Another v. Sree Kumar Tiwary and another**¹⁰)

In view of the catena of perspective pronouncements laid down by the Apex Court, it is difficult to accept the request of these petitioners to regularize/absorb their services in the educational

⁹ 2018 (3) SCC 218

¹⁰ 1997 (4) SCC 388

institutions under the control of TTD with retrospective effect from the date of their initial appointments, for the simple reason that, the petitioners were selected based on a notification issued by the second respondent, which is purely on contract basis for a period of ten months. Working for ten months in the educational institution of TTD with an intermittent gap of two months, though contract period was extended for different periods, that would not confer any right, since TTD Service Rules does not permit such employment on contract basis. Even as on date, the contract period was not extended. On this ground alone, the petitioners are disentitled to claim the relief in these petitions. Hence, the point is answered in favour of the respondents and against the petitioners.

In the result, writ petitions are allowed-in-part, declaring G.O.Rt.No.1411 Revenue (Endts.III) Department dated 28.11.2019 as illegal and arbitrary and the same is hereby set-aside, while declining to issue a direction for regularization of the petitioners.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.02.2021

SP