

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2020

Delivered on : 09.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.(MD).No.24819 of 2018 and W.P.No.8431 of 2017 and W.P.Nos. 19958, 18359, 20268, 21393, 21578, 21619, 22105, 22560, 22606, 22621, 22627, 24286, 32076, 35583, 35866 of 2019 and W.P.Nos.255, 1079, 1665, 8169, 8170, 8172, 8512 of 2020 and W.P(MD).No.4887 of 2019 and Cont.P.(MD).Nos.945 & 946 of 2019

and

WMP Nos.19463,19464,17717,17718,19659,19660,20601,20599,20783, 21367, 21374,21996,21997, 22053, 22054, 22091, 22082, 22083, 22089, 24042,24044,32335,32336,36453,36774,36776,36777/2019,484,5207, 318, 487,3797,1975, 296, 298, 299,1282, 1283, 1943,19296 of 2020

WMP(MD).Nos.22505/2018,11416, 11417, 3892 of 2019

WP.(MD).No.24819 of 2018

- 1.T.R.Kannan
- 2.E.Raja
- 3.A.Krishna Prakash
- 4.N.R.Sujin
- 5.N.Bethlin Nelmin
- 6.N.Subash

..Petitioners

W.P.(MD).No.24819/2018

.Vs.

1.The Registrar,
Anna University,
Sardar Patel Road,
Chennai 600 025.

2.The Dean,
University College of Engineering,
Anna University Constituent College,
Nagercoil.

... Respondents
in W.P(MD).No.24819/2018

Prayer in WP.(MD).No.24819 of 2018 :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to absorb the Petitioners as Assistant Professor, in the respective Department i.e., Department of Civil Engineering, Department of Mechanical Engineering and Department of Electronics and Communication Engineering with effect from the date of appointment.

For Petitioners

in W.P.(MD).Nos.24819/2018 & 4887/2019,

W.P.Nos.18359,22560,22606,22621,22627,

32866/2019 & W.P.Nos.255,8169,

8170,8172,8512/2020

: Mrs.D.Geetha

in W.P.Nos.19958,20268,21393,

22286,32079/2019 &

W.P.Nos.1079,1665/2020

: Mr.G.Sankaran

in W.P.No.21578 of 2019

: Mr.Muruganatham

& W.P.No.8431/2017

in W.P.No.21619 of 20120

:M/s.Achari and Antoni Associates

in W.P.Nos.22105 &23383/2019

: Mr.Selvathirumurugan

For Respondents:

in W.P.(MD).No.24819/2018,W.P.(MD).No.4887/2019,

W.P.No.19958 18359,20268,21393,

21578,22105,22560,22606,22621,24286,

32076,35583,35866/2019 and

W.P.Nos.255, 1079,

8169, and 1665 /2020

(For Anna University)

: Mrs.Narmadha Sampath

Addl. Advocate General

Assisted by:

W.P(MD).No.24819/2018..etc Batch of 2020

Mr.L.P.Shanmugasundaram
Standing Counsel for Anna University

(For Government)
Mr.V.Akil Akbar Ali
Government Advocate

For 4th respondent
in W.P.No.22650,22606,
22621,22627, 35866/2019
& W.P.No.255/2020

: Mr.B.Rabu Manohar
Central Govt. Standing Counsel

For 5th respondent
in W.P.No.22650,22606
and 22627/2019

: Mrs.V.Sudha
Standing Counsel

for 5th respondent
in W.P.No. 22621 :

Mr.P.Mahadevan
Standing Counsel

COMMON ORDER

The issues involved in these batch of Writ Petitions are common/interrelated and hence taken up together and this common order is passed. The arguments were heard entirely through video conferencing during Court holidays on 26th, 27th and 30th of October 2020, on the consent given by all the counsels appearing on behalf of the respective parties and after getting appropriate orders from the Hon'ble Chief Justice. The hearing was concluded on 30.10.2020 and orders were reserved.

2.The State of Tamil Nadu opened Anna Universities of Technology at the regional level, at Tiruchirappali, Madurai, Coimbatore and Tirunelveli in the year 2008-2009. These Regional Universities started functioning with temporary staff recruited without approved or sanctioned posts. For the period between 2008 and 2011, appointments in the categories of teaching and non-teaching staff were made by erstwhile Anna Universities of Technology Chennai, Tiruchirapalli, Madurai, Coimbatore and Tirunelveli, both on permanent as well as

temporary basis. In the year 2011, a policy decision was taken by the Government of Tamil Nadu to merge all the regional Anna Universities of Technology. His Excellency the Governor of Tamil Nadu, during his inaugural address at the first session of the 14th Legislative Assembly on 03.06.2011, declared that -

“Creation of a large number of Universities for higher education alone does not improve the standard of education, rather creation of new Anna Universities in different places has weakened Anna University, Chennai and has only resulted in the creation of unviable Institutions and does not improve the quality of education. Therefore, this Government has decided to restore the original status of Anna University. For this, the Government will come out with specific programs to transform Universities in the state into world class institutions”.

Accordingly, the Government of Tamil Nadu enacted the Tamil Nadu University Laws (Amendment and Repeal) Act, 2011 to amend the Anna University Act, 1978 and to repeal certain University laws.

3.The Tamil Nadu Government, by promulgating the Tamil Nadu University Laws (Amendment and Repeal) Act 2011, merged all erstwhile Anna Universities of Technology Coimbatore, Tiruchirapalli, Tirunelveli, Madurai and Chennai with Anna University Chennai. A Monitoring Committee under the Chairmanship of Tmt. Sheela Balakrishnan, I.A.S., former Additional Chief Secretary, was constituted by the Government vide G.O.(Ms).No.218 Higher Education (I-1) Department dt. 26.12.2011. The Committee was tasked with methodically planning and overseeing the smooth transition process of the merger. Measures were initiated to list out persons serving in the erstwhile Anna Universities of Technology as per Subsection (9)(a) of Section 33 of Tamil Nadu University Laws (Amendment and Repeal) Act 2011, to devise ways and means to implement Subsection (9)(b) of Section 33 of the act, and to absorb teaching and non-teaching staff who had previously been appointed on a permanent basis. One of the stated objectives of the Monitoring Committee was to minimize the hardships to the faculty and staff appointed with eligible qualification, by following proper procedure in the University Departments/ Constituent Engineering

Colleges of erstwhile Anna Universities of Technology and to explore mechanisms to accommodate them appropriately in the Regional Offices and in Constituent Engineering Colleges of Anna University, Chennai.

4.The Report submitted by the aforesaid Committee had observed serious lacunae in administrative and personnel processes in the recruitments done by erstwhile Anna Universities of Technology. The Report noted that the Department wise breakup for approved posts were not available in some of the Constituent Colleges, and hence the Department wise breakup was derived based only on staffing patterns found in Government Engineering Colleges and other Constituent Colleges. Accordingly, the number of staff who had been appointed in excess in various categories was also indirectly derived. It was further observed at Para 9.3 of the Report that, “when the excess staff including those engaged on ad hoc basis over and above the approved posts, was worked out category-wise and Department-wise in each Institution, the total number in excess was much higher at 899 [Teaching faculty: 327, University Departments:181, Constituent Colleges:146]”.The Monitoring

Committee thereby made the following recommendations-

“12. The Committee recommends that the following category of the staff in University Departments of Anna Universities of Technology-Chennai, Tirunelveli, Madurai and in Anna Universities of Technology-Trichy and constituent College of Tirunelveli be considered as eligible for re-development.

- Properly appointed Staff in Anna Universities of Technology of Coimbatore, Chennai Tirunelveli and Madurai : 150
- Regularly appointed but in excess of approved posts in Anna Universities of Technology – Coimbatore, Chennai, Tirunelveli, Madurai and Trichy, , UCE – Nagercoil and UCE- Thoothukudi : 45
- Pay deviation cases:2

The Committee considers it essential to ensure that the redeployment is done in a manner that causes least dislocation to the staff. At the same time, where appropriate slots cannot be found, in accordance with Subsection (9)(b) of Section 33 of Tamil Nadu Universities Laws (Amendment and Repeal) Act, 2011, redeployment to other institutions

may have to be resorted to. The decision to retain staff in the same location, to transfer them to other Constituent Colleges or to maintain their names in the Surplus pool will be based on option and seniority, based on a transparent Counselling methodology.

5. Based on the recommendations and guidelines in the aforesaid Report, Anna University Chennai constituted a Scrutiny Committee to streamline the process of absorbing teaching and non-teaching staff of erstwhile Anna Universities of Technology into the merged Anna University Chennai, with effect from 01.08.2012. This Scrutiny Committee went through the process of sanctioning teaching and non-teaching posts and scrutinized the process of recruitment. The Scrutiny Committee then brought out specific issues in appointments of teaching and non-teaching staff at the erstwhile Anna Universities of Technology, including the finding that “Certain appointments both in teaching and non-teaching categories were done without the sanction of posts by Finance Committee and Syndicate of the respective Universities of Technology concerned”.

6. After the merger of the regional level Universities as described above, the Respondents had called for applications for recruitment to the post of Teaching Fellows (Temporary basis) during the years 2011-2015. According to the Petitioners, the qualification prescribed for the said position was the same as that of an Assistant Professor under various disciplines. The University called the Petitioners to appear for the written test and interview and the certificates of the Petitioners were also verified. The Petitioners having successfully cleared the selection process, were appointed as Teaching Fellow in the respective Departments either in the University or its Constituent Colleges. The appointment orders issued to the Petitioners clearly mentions that the appointment is on contract basis for a particular period of time and only consolidated pay will be made to the Petitioners every month. The appointment order also makes it clear that the appointment does not confer any right or privilege for a regular, permanent or tenure appointment in the University.

7.It can be seen from records that the selection was conducted by a Selection Committee constituted by the Vice-Chancellor and this Committee is more or less in line with Clause 13 under Schedule II of the Anna University Act. This Committee has only scrutinized the applications submitted by the Petitioners, conducted the written test and interview and has submitted its recommendation to the Vice-Chancellor pursuant to which the appointment orders have been issued in favour of the Petitioners.

8.The services of the Petitioners and others, who were also working as Temporary Teaching Fellows was extended from time to time initially every year and later on once in six months.

9.It is also seen from records that many of the petitioners were also undergoing part-time PhD Programme and they came within the stream of full-time teachers. In fact, as per the Regulations for Doctor of Philosophy of Anna University, only candidates who are working as full-time teachers of the University or its Constituent Colleges will be

eligible to apply for part-time PhD Programme. Thereby many of the Petitioners were also parallely pursuing with their PhD Programme.

10.It is also seen from records that the Petitioners in the course of discharging their services as Teaching Fellows, were also engaged as Central Valuation Examiners, Invigilators, Hall Superintendents, External Examiners for Practical Examination / Project viva-voce Examination and they were also setting question papers for Practical and Theory Examinations. The Petitioners were also attending various workshops towards Training Programmes and Faculty Development Programmes. It can also be seen that the Petitioners have published various research papers.

11.The Anna University initiated steps to recruit faculty at all levels viz; Assistant Professors, Associate Professors and Professors and an advertisement was issued on 11.07.2015 and it was widely published and applications were called for various posts. This advertisement became a subject matter of challenge in a batch of Writ Petitions on

various grounds and there are nearly eight Writ Petitions pending in this regard. The Selection Process was stayed by this Court by an order dated 06.01.2016 and this Court directed the Anna University to proceed with the selection but directed that no final orders should be passed.

12.The above order passed by this Court virtually stalled the entire recruitment process. Therefore, the University continued to engage the services of the Teaching Fellows by extending their period from time to time.

13.It is at this point of time, Writ Petitions came to be filed before this Court, seeking for regularization of the Petitioners in the Post of Assistant Professor from the date of their appointment. Interim orders came to be passed by this Court restraining the respondents from disengaging the services of the Petitioners as Teaching Fellows in the respective Constituent Colleges. These interim orders were passed in W.P(MD).No.24819 of 2018 and W.P.(MD).No.4887 of 2019.

14.The Respondent University while extending the period of the contract up to 30.06.2019, for the first time inserted a Clause to the effect that the further continuance beyond 30.06.2019, will be assessed on need basis and on the policy that will be prevalent at that point of time. In the light of this Clause, the Respondent University constituted Review Committees to assess the performance of the Teaching Fellows. The Review Committees conducted the Review on 14.06.2019 and 18.06.2019 for 426 candidates and out of which 348 candidates were recommended by the Review Committee and 78 candidates were not recommended. This was also approved by the Vice-Chancellor. The further extension of period was granted only to those candidates, who were recommended by the Review Committee and for others it was not extended.

15.A batch of Writ Petitions came to be filed before this Court questioning the non-extension of the period for certain candidates on the ground that the Review Committee was an eye wash to get rid of candidates, who had approached this Court seeking for regularization.

The Review was further questioned on the ground that there was no transparency, there was no basis on which the Review was conducted and the results of the Review was not even published. The Review was further questioned on the ground that the Petitioners had performed exceedingly well in terms of the results produced by them and the entire exercise of Review was arbitrary. Some of the Petitioners, who were recommended by the Review Committee and whose tenure was also extended, were asked to sign a declaration which contained a Clause to the effect that no legal proceedings can be taken against the University questioning any termination. For those who did not give this declaration, they were not allowed to join service. Therefore, the Petitioners filed Writ Petitions to direct the respondents to grant an order of extension of service and in some Writ Petitions they also sought for regularization of service.

16.The University proceeded to issue Notification dated 07.06.2019, calling for applications for appointing Teaching Fellows [Temporary] in various Departments in the University and its Constituent

Colleges. This Notification came to be challenged in W.P.No.18359 of 2019, on the ground that one set of Temporary Teaching Fellows cannot be replaced by another set of Temporary Teaching Fellows. This notification came to be stayed by this Court by an order dated 01.07.2019. This interim order came to be challenged by the University in W.A.No.2353 of 2019 and the Division Bench of this Court by an interim order dated 25.07.2019, permitted the University to proceed further with the selection process and made it clear that no appointment order will be issued to the selected candidates without specific orders of this Court. The Division Bench further clarified by an order dated 21.08.2019, making it clear that the interim orders passed on 25.07.2019, will not operate as an order of stay of operation of the interim order passed in W.P.(MD).No.24819 of 2018 and WP(MD).No.4887 of 2019.

17.The Anna University in the meantime made an attempt to appoint teachers on hourly basis in various Constituent Colleges and this came to be challenged in W.P.No.22621.. etc., of 2019. This Court by an order dated 19.11.2019, ordered *Status quo*.

18.The Anna University again issued a notification dated 19.12.2019, inviting applications for appointing Teaching Fellows (Temporary) in various Departments in the University and its Constituent Colleges. This notification came to be challenged in W.P.No.35866 of 2019 and W.P.No.255 of 2020. This Court by an interim order dated 30.12.2019, stayed the advertisement notification dated 19.12.2019.

19.Writ Petitions have also been filed for a direction to the respondents to bring the Petitioners under the time scale of pay from consolidated pay. These Writ Petitions have been filed mainly relying upon the principle of equal pay for equal work. The Petitioners wanted the same pay that is made to the regular Assistant Professors since according to the Petitioners, they are doing the same work as that of the regular Assistant Professors.

20.There are two Contempt Petitions in Cont.P.(MD).Nos.945 and 946 of 2019, which have been filed on the ground that the services of the Petitioners have been disengaged by the University inspite of the

order of interim injunction granted in W.P(MD).No.24819 of 2018 and W.P(MD).No.4887 of 2019.

21.The following tabular column will give a bird's eye view of the various reliefs sought for by the Petitioners in their respective Writ Petitions.

S. No	Writ Petition Number	Period from which the Petitioner/ Petitioners was/were engaged by Anna University	Period from which the Petitioner/ Petitioners was/were disengaged by Anna University	Relief claimed in the Writ Petition.
1.	19958 of 2019 (14 Petitioners)	02.09.2011	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of Petitioners in the post of Teaching Fellow/Visiting Faculty in the respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons and for regularization of service.
		05.09.2011	30.06.2019	
		03.09.2013	30.06.2019	
		16.08.2013	30.06.2019	
		19.07.2011	30.06.2019	
		05.09.2011	30.06.2019	
		11.01.2013	30.06.2019	
		11.01.2013	30.06.2019	
		05.07.2015	30.06.2019	
		24.12.2012	30.06.2019	
		18.07.2013	30.06.2019	
		19.07.2013	30.06.2019	
		19.07.2013	30.06.2019	
13.08.2014	30.06.2019			

2.	20268 of 2019 (7 Petitioners)	17.07.2015	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of Petitioners in the post of Teaching Fellow/Visiting Faculty in the respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons and for regularization of service in the post of Assistant Professor.
		13.08.2014	30.06.2019	
		18.02.2016	30.06.2019	
		17.07.2015	30.06.2019	
		01.08.2012	30.06.2019	
		11.07.2011	30.06.2019	
		11.08.2014	30.06.2019	
3.	21393 of 2019 (11 Petitioners)	11.02.2015	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of Petitioners in the post of Teaching Fellow/Visiting Faculty in the respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons and for regularization of service in the post of Assistant Professor.
		01.10.2010	30.06.2019	
		26.08.2010	30.06.2019	
		10.07.2015	30.06.2019	
		19.02.2016	30.06.2019	
		21.09.2015	30.06.2019	
		03.07.2015	30.06.2019	
		13.06.2014	30.06.2019	
		12.08.2013	30.06.2019	
		19.08.2015	30.06.2019	
29.06.2015	30.06.2019			
4.	24286 of 2019	07.07.2010	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of

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				Petitioners in the post of Teaching Fellow in the
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				respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons and for regularization of service in the post of Assistant Professor.
5.	32076 of 2019	04.07.2013	05.09.2018	Writ of Certiorarified Mandamus, seeking to quash the impugned proceedings of 2 nd Respondent dt.05.09.2018, in so far as clause No.11 is concerned and consequently allow the Petitioner to continue in service as Teaching Fellow.
6.	1079 of 2020	02.02.2015	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of Petitioners in the post of Teaching Fellow in the respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons.
7.	1665 of 2020	08.02.2011	30.06.2019	Writ of Mandamus, directing the Respondents to grant an order of Extension of service of Petitioners in the post of Teaching Fellow in the respective Colleges for continuance in service beyond 30.06.2019 on par with similarly placed persons.

8.	22105 of 2019	11-08-2014 to 03-02-2015 09-02-2015 to 15-05-2015 21-05-2015 to 31-10-2015 06-11-2015 to 30-04-2016 06-05-2016 to 30-09-2016 06-10-2016 to 31-03-2017 06-04-2017 to 30-06-2017 06-07-2017 to 30-09-2017 01-10-2017 to 31-12-2017 05-01-2018 to 30-06-2018 05-07-2018 to 31-12-2018 07-01-2019 to 30-06-2019	01-07-2019	It is therefore prayed that this Hon'ble court may be pleased to issue and Writ of Mandamus or any other appropriate writ or order or direction in the nature of writ directing the respondents to grant an order of extension of service to the petitioner in the post of Teaching Fellow in the Respondent University College of Engineering/Constituent College of Anna University for continuance in service beyond 30-06-2019 on par with other similarly placed Teaching Fellows selected along with the petitioner with all consequential and other attendant benefits and pass such further or other orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case and thus render Justice.
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9.	35583/2019	29-1-2015 to 15-5-2015 21-5-2015 to 31-10-2015 6-11-2015 to 30-4-2016 6-5-2016 to 30-9-2016 6-10-2016 to 31-3-2017 6-4-2017 to 30-6-2017 6-7-2017 to 30-9-2017 1-10-2017 to 31-12-2017 5-1-2018 to 30-6-2018 5-7-2018 to 30-6-2018 5-7-2018 to 31-12-2018 7-1-2019 to 30-6-2019	1-7-2019	It is therefore prayed that this Hon'ble court may be pleased to issue and Writ of Mandamus or any other appropriate writ or order or direction in the nature of writ directing the respondents to grant an order of extension of service to the petitioner in the post of Teaching Fellow in the Respondent University College of Engineering/ Constituent College of Anna University for continuance in service beyond 30-06-2019 on par with other similarly placed Teaching Fellows selected along with the petitioner with all consequential and other attendant benefits and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render Justice.
10.	21619 of 2019 (3 Petitioners)	02.09.2010	30.06.2019	Directing the respondents to grant an order of extension of service to the petitioners in the post of Teaching Fellow in University College of Engineering, Thirukkuvalai/Constituent College of Anna University, Chennai for
		03.06.2016	30.06.2019	continuance in service beyond 30.06.2019 on par with other similarly placed Teaching Fellows selected along with the petitioners,

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		11.08.2014	30.06.2019	with all consequential and other attendant benefits.
11.	21578 of 2019	21.12.2012	30.06.2019	<p>The Honourable Court be pleased to issue a writ in nature of Writ of Mandamus or Order or direction by directing the respondents not to terminate the services of the petitioner and not to stop the monthly pay of the petitioner pending the regularization of service of the petitioner as Assistant Professor in the respondent university. institution and pass as such other orders and thus render justice.</p> <p>The same petitioner filed WP No 8431 of 2017 seeking for regularization of service in the post of assistant professor from the date of appointment. This Writ petition also forms part of this batch.</p>

12.	W.P.(MD) No.24819 of 2018 & Cont. P. (MD) 945 of 2019	11.08.2014	30.06.2019	For Mandamus to direct to the respondents to absorb the petitioners as Assistant Professor with effect from the date of appointment. For violation of interim order made in WMP MD No. 22505 of 2018, order dt. 18.12.2018
13.	W.P.(MD) No 4887 of 2019 & Cont. P. (MD) 946 of 2019	04.08.2014	30.06.2019	For Mandamus to direct to the respondents to absorb the petitioners as Assistant Professor with effect from the date of appointment. For violation of interim order made in WMP MD No. 3892 of 2019, order dt. 01.03.2019
14.	22621 of 2019	30.08.2010	30.06.2019	Certiorarified Mandamus

	22627 of 2019	01.08.2013	30.06.2019	challenging the E-Mail communication dt. 05.07.2019 and direct the respondents to absorb the petitioners as Assistant Professors from the date of appointment with all attendant benefits
15.	22560 of 2019	01.12.2015	30.06.2019	
16.	22606 of 2019	30.08.2010	30.06.2019	
17.	18359 of 2019	Ranging from 11/01/2013 to 4 .8. 2014	30.6.2019	The same writ petitioners in WP (MD) 24819/18 and 4887/19.
18.	255 of 2020			Writ of Certiorari challenging the recruitment notifications for Teaching Fellows dt. 07.06.2019 and 19.12.2019
19.	35866 of 2019			
20.	8169 of 2020	11.01.2013	30.06.2019	Writ of mandamus directing the respondents to consider the representation made by the petitioners and consequently bring the petitioners under time scale of pay from consolidated pay.
		04.08.2014	30.06.2019	
	8172 of 2020	30.08.2010	30.06.2019	
	8170 of 2020	01.12.2015	30.06.2019	
21.	8512 of 2020	06.08.2014	30.06.2019	

22.Mrs.D.Geetha, learned counsel appearing on behalf of some of the Petitioners made the lead submissions and the same is captured by way of bullet points.

- Statute 13(7) (III) of the Anna University Act, Schedule II provides for selection on permanent basis, of temporarily appointed staff by a locally appointed Selection Committee or a regular Selection Committee and the Act itself envisages the utilisation of the services of such temporarily appointed staffs. The Syndicate is the appointing authority of all the Teaching Faculties and Non-Teaching Staff based on the recommendations of the Selection Committee.
- The Petitioners were appointed through a competitive process where there was an advertisement issued by the Respondent University, selection conducted by a Selection Committee constituted by the Vice-Chancellor and only those Petitioners who were found to have merit were selected as Teaching Fellows.

- The Petitioners have put in services ranging from six years to ten years and they have been unceremoniously disengaged by the Respondent. That apart this was done in violation of the interim orders passed by this Court.
- The Petitioners have rendered their services as teachers for 20 hours per week, though the prescribed minimum hours of teaching is 16 hours per week as per the AICTE [All India Council for Technical Education] and UGC [University Grants Commission] Regulations.
- The Petitioners have performed all the activities of a regular Assistant Professor and have also produced 100% results in several subjects and have better results than the regular faculty and therefore, there was no ground to disengage the services of the Petitioners in the name of a farcical review which had no statutory backing.
- The Petitioners have been appointed in the regular vacancies as per the students : faculty ratio as prescribed

by the AICTE at the time of their appointment and their names have also been shown as faculty on contract basis to obtain the approval from AICTE continuously from the date of their appointment.

- The Petitioners have registered for part time PhD degree which as per the Regulation can be undergone only by a full-time teacher and by disengaging the Petitioners, the Petitioners have also been prevented from completing their PhD Course.
- Both the UGC Regulations and AICTE Regulations only talks about appointment on contract basis which should not exceed 10% of the total number of faculty positions in a College/University and the appointment can be only under the designation of Assistant Professor, Associate professor and Professor. The University has violated these Regulations and almost 90% of the Teaching faculty is run with temporary hands and even the temporary hands are not designated with the appropriate

nomenclature.

- The UGC Regulations and AICTE Regulations categorically provides for counting of past services for direct recruitment and therefore the Petitioners having been appointed on merits, should be regularised in the Post of Assistant Professor by virtue of utilizing their services continuously and also the Petitioners are coming clearly within the cadre strength.
- There are only 557 regularly appointed faculty in the University and the Constituent Colleges put together. The total strength of the students during the academic year 2018-19, was nearly 25,580. According to the AICTE Regulations, there must be 1:20 ratio between the students and faculty and therefore, there is a requirement for 1279 teaching faculty $[25580/20]$. It is therefore clear that there is a huge vacancy position in the teaching faculty.
- The entire process of Review undertaken by the

University is a farce. The fact that no results were published about the outcome of the Review by itself shows that it was done in an arbitrary manner and the University wanted to get rid of candidates, who were questioning the action of the University.

- The University went to the extent of engaging teaching staff on a hourly basis in total violation of the Circular No.912, dated 30.05.2019, which bars such engagement from the academic year 2019-20 onwards.
- The Petitioners who have performed the same work as that of the regular Assistant Professors, are also entitled for the same scale of pay on the principle of equal pay for equal work. To substantiate this submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others* reported in (2017) 1 SCC 148.
- The appointment of the Petitioners cannot by any stretch be termed as illegal appointments and therefore the

Petitioners are entitled for regularization. To substantiate this submission, the learned counsel relied upon the following judgments:

(a) *Secretary, State of Karnataka and Others v. Umadevi and Others* reported in *(2006) 4 SCC 1*.

(b) *U.P.State Electricity Board v. Pooran Chandra Pandey and Others* reported in *(2007) 11 SCC 92*.

(c) The Registrar, Manonmaniam Sundaranar University v. Thendral and Others made in W.A(MD).No.351 etc., of 2012 dt.29.04. 2014.

(d) *Peiryar University v. D.Gayathri and Others* reported in *(2018) 3 CTC 857*.

(e) *Narendra Kumar Tiwari and Others v. State of Jharkhand and Others* made in *Civil Appeal Nos.7423-7429 of 2018, dt.01.08.2018*.

(f) *Nihal Singh and Others v. State of Punjab and Others* made in *Civil Appeal No.1059 etc., of 2005*

dt.07.08.2013.

23.Mr.G.Sankaran, learned counsel apart from adopting the submissions made by Mrs.D.Geetha, made the following submissions.

- Teaching fellow is only a temporary arrangement to balance the work load till regular appointment takes place and all the Petitioners satisfy the norms, qualifications and other skills and they were all appointed on merits through a selection conducted by a duly appointed Committee.
- The process of Review was adopted by the University only to single out certain candidates and the entire process was arbitrary and not even the results were published after the Review. The counter affidavit filed by the respondent does not even explain as to how the assessment was made for each candidate, who did not even spend two minutes before the so called Assessment Committee.

- One set of temporary employees cannot be replaced by another set of employees and this position of law has been sufficiently settled by the Hon'ble Supreme Court. To substantiate this submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in *State of Haryana and Others v. Piara Singh and Others* reported in *(1992) 4 SCC 118*.
- Even a temporary employee is entitled for protection against arbitrary termination from service where there is a hostile discrimination. To substantiate this submission, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in *Manager, Government Branch Press and Another v. D.B. Belliappa* reported in *(1979) 1 SCC 477*.
- The Petitioners are entitled for regularization to the post of Assistant Professor since they possessed all the qualifications, they come within the cadre strength and their services have been utilised continuously.

24.The learned counsel appearing on behalf of the other Petitioners adopted the arguments made by Mrs.D.Geetha and Mr.G.Sankaran.

25.Mrs.Narmadha Sampath, learned Additional Advocate General made the following submissions:

- The claim made by the Petitioners that they were appointed through a proper selection is totally false and misleading. The process of regular appointment will begin with a proper advertisement given in leading newspapers and it will be widely published throughout India and in the present case, there was only an internal circulation made in the notice board and by publishing in the website of Anna University.
- The Selection Committee will consist of a nominee of the Chancellor, a nominee of the Government, Experts from reputed Institutions, Head of Departments, Chairman of the concerned faculty and the Vice

Chancellor will be the Chairman of the Committee. In the present case, such a Committee was never constituted.

- The cadre posts of Professor, Associate Professor and Assistant Professor was never put to selection in the present case and the appointment of Temporary Teaching Fellows was purely made on ad hoc basis as a temporary measure till the regular appointment is made.
- Every time, a notification is issued by the Anna University, it is put to challenge before this Court and the entire selection is stalled and even when attempts were made to start the regular process of appointment in 2015, that was also challenged and the University was not able to proceed further with the selection. Therefore, the continuation of engaging the services of teachers on contractual basis can never be taken advantage by claiming for regularization.
- The regular Selection Process will involve determination

of cadre strength and an appointment towards sanctioned post which again will have to be done by following the reservation policy. Therefore, by no stretch, the appointment of the Petitioners can be considered to be a regular appointment.

- The Petitioners having accepted the offer letter which clearly stipulates the terms of employment cannot be allowed to turn around and seek for regularization or continuation in service as a matter of right.
- The candidates who are engaged as Teaching Fellows will have to be reviewed from time to time in order to maintain the standards of the teaching faculty and anyone who is found not fit after Review by the Committee, cannot seek for extension of service. The process of Review can never be challenged since it is within the powers of the University.
- The various other functions performed by the Petitioners is part and parcel of their assignment as a Teaching

Fellow and that will not confer any special rights on the Petitioners to equate themselves with the regularly appointed Assistant Professors.

- The Review Conducted by the Committee can never be termed as arbitrary since out of 426 candidates, who were reviewed, 348 were recommended by the Review Committee and only 78 candidates were not recommended. In fact, even among the seven Petitioners in W.P.(MD) No.24819 of 2018, four of them were recommended and three were not recommended and those Petitioners who were recommended chose not to join the college and therefore, the blame cannot be put against the Respondent University.
- The Review Committee reviewed the temporary Teaching Fellows broadly under three heads viz; content knowledge, past academic performance of students and contribution to the Department – University and assigned marks under each head. Therefore, an objective method

was adopted at the time of reviewing each candidate and no motive can be attributed against the Committee, who had nothing personal against the Petitioners.

- The Petitioners are always entitled to continue with their PhD Programme and that has got nothing to do with their disengagement as Fellow Teachers.
- After interim orders were passed in W.P.(MD).No.24819 of 2018 and WP.(MD).No.4887 of 2019, in compliance of the said order, the period of service of the Petitioners was extended for a further period of six months. Thereafter, the Petitioners subjected themselves for the Review and many of them were found unfit to continue and therefore they were not engaged any further. Therefore, there was no wilful disobedience of the interim orders passed by this Court. In fact, Petitions were filed to vacate the interim orders by citing this reason, but the matter was not heard thereafter. The Respondent University has the highest regard for the

judiciary and there was no intention to disobey the orders passed by this Court.

- The University has stopped engaging teachers on hourly basis and this practice has been completely dispensed with.
- The learned Additional Advocate General to substantiate her submissions relied upon the following judgments:

(a) *State of Karnataka and Others .v. Umadevi and*

Others v. reported in *AIR (2006) SC 1806.*

(b) *Union of India and Others v. A.S.Pillai and Others*

reported in *(2010) 13 SCC 448.*

(c) *State of Rajasthan and Others v. Dayalal and Others*

reported in *AIR (2011) SC 1193.*

26.This Court has carefully considered the submissions made on either side and the materials available on record.

27.The facts of the case which has been dealt with in detail supra, clearly reveals the chaotic situation prevailing in Anna University. This University is considered to be one of the reputed University in India and it has produced great Engineers. This University has an international repute and students from this University are well recognised in foreign countries when they go for higher studies. Only at the time of hearing this case, this Court realised the fact that most of the teaching faculty who are engaged by the University and its Constituent Colleges are temporary teachers employed on contractual basis on a consolidated pay.

28.It is shocking that an University of this stature having nearly 13 Constituent Colleges of Engineering and 3 Regional campuses of the University is functioning with a strength of only 556 teaching staff employed on a regular basis from the year 2011 onwards and thereafter the appointment of teaching faculty has always been on temporary basis for nearly ten years. It is brought to the notice of this Court that as on today totally 310 Teaching Fellows are working on a temporary basis on consolidated pay. It is even more shocking that the teaching faculty was

engaged on hourly basis and fortunately it is informed that this practice has been dispensed with by the University. This is not the manner in which a reputed University like Anna University should be functioning. It is also seen from records that this temporary teaching faculty is shown in the list of approved cadre strength that is submitted by all the Institutions before AICTE and the renewal of approval is granted by considering this list every year. The Petitioners before this Court have been appointed as Teaching Fellows on temporary basis and all of them have put in service ranging from six to ten years.

29.The information provided under the Right to Information Act, shows that for the academic year 2018-19, the total number of students, who were admitted under various Departments in the University, Constituent Colleges and regional campuses works out to nearly 25,680 students. This is also confirmed by the additional note circulated by the learned Standing Counsel for Anna University. As per the AICTE Notification issued in the year 2018, the faculty student ratio was revised from 1 : 15 to 1 : 20. If this ratio is applied, there will be a

requirement of 1284 teaching faculties [25680/20]. The above status pertains to UG Courses. Insofar as the PG Courses are concerned, the total student strength works out to 1806 students. The AICTE notification prescribes the faculty student ratio at 1:15 and if this ratio is taken into consideration, there will be a requirement of 120 [1806/15] teaching faculties. The Regulations fixes the ratio of Professor, Associate Professors and Assistant Professors at 1 : 2 : 6 respectively. The overall staff required for UG and PG put together is 1404. The 111th Finance Committee has sanctioned 981 posts out of which 556 posts alone has been filled up with regular staff.

30.The above figures gives a clear picture with regard to the state of affairs prevailing in the University. The teaching faculty that is available today [556 regularly employed and 310 temporarily employed] is nowhere near the requirement under the AICTE Regulations. It is surprising that students who come out of this University are faring well despite the non availability of sufficient teaching faculty. Either the students are extremely bright or the available faculty is performing an

extraordinary task by providing with excellent teaching skills. Whatever may be the reason, the fact remains that the University will have to take immediate steps on a war footing to fill up the vacancies through regular appointments.

31.This pattern of engaging temporary teaching faculty has afflicted this university for quite a long-time. The records shows that the University during the period from 2000 to 2003 use to appoint teaching faculty under various nomenclatures such as Lecturer–Trainee, Teaching Research Associate, Visiting Professor etc., on contract basis. They later came to be absorbed in the existing vacancies during the year 2008. These persons later got promoted to higher posts.

32.Statute 7 of the Anna University Act deals with the powers and duties of the Syndicate and Clause-G provides that the Syndicate can appoint such Committees, either standing or temporary, as it may consider necessary and satisfy the terms of reference subject to the provisions of the Act and the Statute. It is with this power, Selection

Committees are appointed under Statute 13 for making recommendations to the Syndicate for appointment to the posts of Professor, Assistant Professor etc. For the purposes of this case, Clause 7 under Statute 13 will have more relevance and the same is extracted hereunder:

[7] Appointments to temporary posts shall be made in the manner indicated below:

(i) If the temporary vacancy is for a duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing provisions;

Provided that if the Vice-Chancellor is satisfied that in the interests of work it is necessary to fill the vacancy, the appointment may be made on temporary basis by a local selection committee referred to in sub-clause [ii] for a period not exceeding six months.

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local selection committee consisting of the Chairman of the Faculty concerned, the Head of the Department and a nominee of the Vice-Chancellor.

Provided that if the same person holds the offices of the Chairman and the Head of the Department, the selection committee may consist two nominees of the Vice Chancellor.

Provided further that in case of sudden casual vacancies in teaching posts caused by death or any other reason, the Chairman may, in consultation with the Head of the Department concerned make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(iii) No teacher appointed temporarily shall, if he is not recommended by a regular selection committee for appointment under these statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local selection committee or a regular selection committee, for a temporary or permanent appointment as the case may be.

33. The functioning of the University is subject to the UGC and AICTE Regulations. The UGC has filed a counter affidavit to the effect that both the Regulations 2010 and 2016 do not provide for a teaching post called as teaching fellow and what is provided as Teaching

Faculties are Assistant Professors, Associate Professors and Professor. Therefore, considering the Teaching Fellows as Assistant Professors does not come under the purview of UGC Regulations. This stand was reiterated by the learned Standing Counsel appearing on behalf of UGC.

34.The 2010 Regulations as well as the 2018 Regulations clearly support the stand taken by UGC in these Writ Petitions. When it comes to appointment on contract basis, Clause 13.1 of the 2010 Regulation provides as under:

13.1.The teachers should be appointed on contract basis only when it is absolutely necessary and when the student-teacher ratio does not satisfy the laid down norms. In any case, the number of such appointments should not exceeded 10% of the total number of faculty positions in a College/University. The qualifications and selection procedure for appointing them should be the same as those applicable to a regularly appointed teacher. The fixed emoluments paid to such contract teachers should not be less than the minority gross salary of a regularly appointed Assistant Professor.

Such appointments should not be made initially for more than one academic session and the performance of any such entrant teacher should be reviewed for academic performance before reappointing her/him on contract basis for another session.

In the same way, the 2018 Regulations also reiterates the same position under Clause 13.

35.It is clear from the above that appointment on contract basis should not exceed 10% of the total number of faculty positions in a College/University. Even this contractual appointment must fulfil the selection procedure applicable to the regularly appointed teacher. It also points out that the emoluments paid to such contract teachers should not be less than the monthly gross salary of a regularly appointed Assistant Professor. The facts of the present case shows that the University has not followed these Regulations in terms of the maximum percentage up to which such contract teachers can be appointed and also in terms of the payment made to them under the contract.

36.It will also be relevant to take note of the AICTE Regulations in this regard. This Regulation also provides for only three designations in respect of Teachers in technical institutions and they are Assistant Professors, Associate Professors and Professor. The cadre structure and the mode of appointment is provided only for these three designations. Clause 2.25 gives a detailed guideline as to how the past service has to be counted while going ahead with the process of direct recruitment and promotion. For proper appreciation, this Clause is extracted hereunder:

2.25. Counting of Past Service for Direct Recruitment and Promotion:

previous regular service, whether national or international as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DST or state PSUs etc., should be counted for direct recruitment as an Assistant Professor/Associate professor/Professor provided that:

a) The qualification for the post held are not lower than the qualifications prescribed by the AICTE for Assistant Professor, Associate Professor and professor as the case may be.

b) The post is / was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor/Associate Professor/Reader and Professor.

c) The candidate for direct recruitment has applied through proper channel.

d) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the AICTE for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

e) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University / State Government / Central Government / concerned institutions, for such appointments.

f) The previous appointment was not as guest faculty for any duration or ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided

that:

(i) The period of service was of more than one year.

(ii) The incumbent was appointed on the recommendation of the duly constituted Selection Committee.

(iii)The incumbent was selected for the permanent post in continuation to the ad hoc or temporary service.

(iv)An artificial break in service shall not be used to the prejudice of employee, appointed on permanent basis. The person appointed on a permanent basis shall be given the benefit of the entire service rendered by him with effect from the date of initial appointment (temporary / contract / adhoc) notwithstanding the artificial break/breaks in service.

(v) The incumbent was drawing total gross emoluments not less than the monthly gross salary at the initial stage of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be; and

(vi)At the time of selection, the negotiated terms and conditions clearly mention the period of

experience, nature of experience and same has been consented by the employer.

g. No distinction should be made with reference to the nature of the management (Private/Local Body/Government) of the institution where previous services were rendered while counting past services under this clause.

37.The above Regulation is akin to the UGC Regulation referred supra both in terms of the nature of selection and the salary payable to such temporary teacher. It will be even more relevant to extract Clause 3.2 of the AICTE Regulations which provides for a flexible cadre structure.

3.2. While promoting the incumbent, flexible cadre structure be followed as below:

(i)Incumbent faculty members be upgraded to higher positions, after being eligible, through a process of promotion to be held annually, irrespective of availability of vacancy in that cadre.

(ii)The incumbent to upgraded to a higher position shall be re-designated as Assistant Professor (Senior Scale) / Assistant Professors (Selection Grade) /

Associate Professor /Professor as the case may be.

(iii)With this cadre structure, more faculty members may become Professors / Associate Professors at some point of time as a result of which, cadre ratio as an example may become skewed such as 9:0:0 or 8:1:0 or 5:1:3 etc, but in any case it should not be 0:0:9 or 0:1:8 or 0:2:7.

(iv)The total numbers of minimum faculty positions remain the same as calculated from faculty student ratio, though the cadre ratio is improving with these promotions.

(v)The lower post can be treated vacant once the incumbent moves on higher post through promotions or through direct selection by keeping total sanctioned posts of all cadres put together as fixed.

(vi)The vacant post will be filled by suitable eligible incumbent possessing required qualifications.

(vii)If a suitable candidate is not available, the post shall be filled by open selection.

(viii)The open selection / promotion shall be made by a committee constituted as per norms published in this gazette.

(ix)The candidate shall be promoted from lower

cadre to higher cadre as and when they complete eligibility criteria for the higher cadre, irrespective of availability of posts in that cadre.

Sub Clause (vi) specifically provides that a vacant post can be filled by a suitable eligible incumbent possessing required qualifications. Both the UGC Regulations as well as the AICTE Regulations clearly provides for counting of past services for direct recruitment. Therefore, the services put in by the Petitioners for several years, even though is contractual in nature, has a lot of significance when it comes to filling up the vacant post of Assistant professor. This Court carefully considered the qualifications of each and every Petitioner and found that they satisfy the minimum qualification for direct recruitment as an Assistant professor. The nature of duties performed by them and the various other functions performed by them such as being nominated as Instructors to certify the Institutes for affiliation, publishing research papers etc., clearly shows that they have been performing the functions of a regularly appointed Assistant Professor.

38.The next question is whether the Petitioners can be directed to be regularized to the Post of Assistant Professor. Several judgments were cited in this regard and it was impressed upon this Court that the appointments of the Petitioners cannot be called as illegal appointments since the Petitioners possessed the qualification and they were selected by a duly Constituted Committee and they were regularly engaged in the post of Assistant Professor (even though given the nomenclature as Teaching Fellow) and it was towards a regular vacancy. It was therefore urged that the *Uma Devi* case referred supra cannot be put against the Petitioners. It was further submitted that the Petitioners cannot be treated to be back door entrants.

39.The specific stand taken by the Respondent University is that wide advertisement was not given while selecting the Petitioners and engaging them on a contractual basis. This Court must be very careful while considering a case for regularization and particularly when it comes to the teaching faculty. This Court must be convinced that the petitioners were selected in the same way in which a regular selection

will take place to fill up the post of Assistant Professor which takes within its fold right from publishing the advertisement up to the final selection and each and every procedure should have been followed in order to consider regularization of services. It is true that the learned counsel for the Petitioners have brought to the notice of this Court the judgment of the Division Bench of this Court in *Manonmaniam Sundaranar University and Periyar University*, referred supra. It must be borne in mind that a precedent cannot be followed mechanically by Courts without seeing the facts of the particular case. Even little difference in facts, can make a precedent inapplicable to the facts of a given case.

40.In the present case, the advertisement calling for application was notified only in the Official site of Anna University and it is more in the nature of an internal communication which does not have or carry a wide publication. Any public employment which is undertaken without giving wide publicity through Employment Exchange and Newspapers will suffer from illegality. When the University called for applications

for regular appointment in the year 2015, such wide publicity was given and the same is borne out by records. The law on this issue is well settled and useful reference can be made to the judgment in *P.M.Malathi v. State of Tamil Nadu, rep.by its Secretary Department of School Education, Chennai 600 009 and Others* reported in (2012) 3 MLJ 669 and in *S.Vimalraj and Others v. Additional Chief Secretary to Government and Others* reported in (2015) 1 CTC 424. Therefore, in the present case it cannot be said that the contractual employment of the Petitioners was carried out after giving such a wide publicity.

41.The records clearly substantiates the fact that the Petitioners were all qualified and they all underwent a proper selection process by a duly Constituted Selection Committee. It is also true that there were sufficient vacancies to the post of Assistant Professor at the time of the appointment of the Petitioners on contractual basis. Unfortunately, the temporary appointment did not take place under the nomenclature of Assistant Professor and the Petitioners were given the nomenclature of Teaching Fellows. The Petitioners had also put in service of six years to

ten years and the results produced by the Petitioners shows that they have contributed to the development of the students and also the University and its Constituted Colleges. The Petitioners have acquired a right towards their past services both under the UGC and AICTE Regulations. Many of the Petitioners are also undergoing part time PhD Programme and as per the Regulations for Doctor of Philosophy – 2015, those Petitioners will have to be full-time teachers to pursue the part time PhD Programme and they fall under that stream. If they are stopped from being engaged as full time teachers, it will effectively prevent those Petitioners from continuing with the part- time PhD degree. Thereafter, they can only pursue with the full time PhD Programme which all together falls under a different stream.

42.The entire problem started only after some of the Petitioners approached this Court seeking for absorption to the post of Assistant Professor in the year 2018. Interim orders came to be passed by this Court safeguarding the rights of the Petitioners to continue being engaged by the University. This was the time when the University came

up with the concept of reviewing the performance of the temporary teachers. The manner in which this Review took place by calling 304 candidates candidates on 14.06.2019 at University College of Engineering – BIT Campus, Trichy and 130 candidates on 18.06.2019 at CEG Campus, Chennai and computing the Review on the same day shows the haste with which the Review was carried out. This Review was carried out by the so called Review Committees without any proper basis and even the results were not declared after the Review was conducted. Very curiously, for those who were recommended by this Committee, a declaration was asked to be signed which contained a Clause to the effect that no legal proceeding can be taken against the University against termination. Those who did not sign this declaration were not engaged. This shows the complete change in the attitude of the University against the Teaching Fellows after they approached this Court. The AICTE Regulations itself provides for conducting such a Review by fixing certain parameters. This is found at Annexure IV of the Regulations. This procedure was not followed by the Review Committee and if the Review Committee had followed this procedure,

they could not have completed the review of nearly 434 candidates on 14.06.2019 and 18.06.2019. Therefore, review being shown as an excuse to disengage the services of the Petitioners is totally not acceptable and this Court finds that the whole process of Review was a farce. The records shows that the success rates of the students under these Teaching Fellows many times has even touched 100 % and it is not known as to how this was completely disregarded by the Review Committee.

43.In the considered view of this Court, the respondent University ought to have continued with the services of the Petitioners as it was done earlier and there was absolutely no reason to all of a sudden disengage the Petitioners. Shockingly, the Petitioners in W.P.(MD).No.24819 of 2018 and W.P.(MD).No.4887 of 2019, were disengaged in spite of the interim injunction orders granted by this Court. After the orders were reserved by this Court, the University through proceedings dt. 2.11.2020, extended the services of these Petitioners for a period of six months from 09.11.2020. In view of this development, this Court does not want to pass any further orders in the

Contempt Petitions.

44.The respondent University ought not to have proceeded to issue the subsequent notifications / advertisements dt. 07.06.2019 and 19.12.2019 to again fill up one set of temporary teaching fellows with another set of temporary teaching fellows. It will be useful to rely upon the judgment of the Hon'ble Supreme Court in ***State of Haryana and Others v. Piara Singh and Others*** reported in ***(1992) 4 SCC 118***. The relevant portions in the judgment are extracted hereunder:

44. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in government service.

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 regularisation 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.

50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

45. In view of the above, this Court has absolutely no hesitation to interfere with the Impugned Notifications dt.07.06.2019 and 19.12.2019. Fortunately, in this case the University itself had dispensed

with engaging teachers on hourly basis or else this Court would have been forced to comment upon such a practice.

46.The next issue that has to be taken into consideration is with regard to the pay that has to be made to the Petitioners by the Respondent University. Both the UGC Regulations as well as the AICTE Regulations makes it very clear that even in case of ad hoc or temporary service, the emoluments paid to such contract teachers should not be less than the monthly gross salary of a regularly appointed Assistant Professor. The Anna University gave scant regard to these Regulations and continued with the practice of consolidated pay to the Petitioners which was nowhere near the actual pay made to a regularly appointed Assistant Professor. It is again reiterated that the Petitioners even though were called as Teaching Fellows, were actually performing the duties of an Assistant Professor with all qualifications. Therefore, they should have been paid the emoluments on par with the monthly gross salary of a regularly appointed Assistant Professor.

47.It is also important to take note of the judgment of the Hon'ble Supreme Court in ***State of Punjab and Others v. Jagjit Singh and Others*** reported in ***(2017) 1 SCC 148***. The relevant portions of the judgment are extracted hereunder:

42. All the judgments noticed in paras 7 to 24 herein above, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of “equal pay for equal work”. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them were against the same post for which a higher pay scale was being allowed in other government departments. Or alternatively, their duties and responsibilities were the same as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle of “equal pay for equal work” was invoked and considered, it would be just and appropriate to delineate the parameters laid down by this Court. In recording the said

parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of “equal pay for equal work”. Our consideration, has led us to the following deductions:

42.1. The “onus of proof” of parity in the duties and responsibilities of the subject post with the reference post under the principle of “equal pay for equal work” lies on the person who claims it. He who approaches the court has to establish that the subject post occupied by him requires him to discharge equal work of equal value, as the reference post (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645] , UT Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348] , SAIL case [SAIL v. Dibyendu Bhattacharya, (2011) 11 SCC 122 : (2011) 2 SCC

(L&S) 192] and National Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

42.2. The mere fact that the subject post occupied by the claimant is in a “different department” vis-à-vis the reference post does not have any bearing on the determination of a claim under the principle of “equal pay for equal work”. Persons discharging identical duties cannot be treated differently in the matter of their pay, merely because they belong to different departments of the Government (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] and D.S. Nakara case [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]).

42.3. The principle of “equal pay for equal work”, applies to cases of unequal scales of pay, based on no classification or irrational classification (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982

SCC (L&S) 119]). For equal pay, the employees concerned with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see Federation of All India Customs and Central Excise Stenographers case [Federation of All India Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] , Mewa Ram Kanojia case [Mewa Ram Kanojia v. All India Institute of Medical Sciences, (1989) 2 SCC 235 : 1989 SCC (L&S) 329] , Grih Kalyan Kendra Workers' Union case [Grih Kalyan Kendra Workers' Union v. Union of India, (1991) 1 SCC 619 : 1991 SCC (L&S) 621] and S.C. Chandra case [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943]).

42.4. Persons holding the same rank/designation (in different departments), but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay and cannot claim the benefit of the

principle of “equal pay for equal work” (see Randhir Singh case [Randhir Singh v. Union of India, (1982) 1 SCC 618 : 1982 SCC (L&S) 119] , State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]). Therefore, the principle would not be automatically invoked merely because the subject and reference posts have the same nomenclature.

42.5. In determining equality of functions and responsibilities under the principle of “equal pay for equal work”, it is necessary to keep in mind that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be

legitimate and permissible (see Federation of All India Customs and Central Excise Stenographers case [Federation of All India Customs and Central Excise Stenographers v. Union of India, (1988) 3 SCC 91 : 1988 SCC (L&S) 673] and SBI case [SBI v. M.R. Ganesh Babu, (2002) 4 SCC 556 : 2002 SCC (L&S) 568]). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of “equal pay for equal work” (see State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71] and Grih Kalyan Kendra Workers' Union case [Grih Kalyan Kendra Workers' Union v. Union of India, (1991) 1 SCC 619 : 1991 SCC (L&S) 621]).

42.6. For placement in a regular pay scale, the claimant has to be a regular appointee. The claimant should have been selected on the basis of a regular process of recruitment. An

employee appointed on a temporary basis cannot claim to be placed in the regular pay scale (see Orissa University of Agriculture & Technology case [Orissa University of Agriculture & Technology v. Manoj K. Mohanty, (2003) 5 SCC 188 : 2003 SCC (L&S) 645]).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay scales. Such as — “selection grade”, in the same post. But this difference must emerge out of a legitimate foundation, such as — merit, or seniority, or some other relevant criteria (see State of U.P. v. J.P. Chaurasia [State of U.P. v. J.P. Chaurasia, (1989) 1 SCC 121 : 1989 SCC (L&S) 71]).

42.8. If the qualifications for recruitment to the subject post vis-à-vis the reference post are different, it may be difficult to conclude that the duties and responsibilities of the posts are qualitatively similar or comparable (see Mewa Ram Kanojia case [Mewa Ram Kanojia v. All India Institute of Medical Sciences, (1989) 2 SCC 235 : 1989 SCC (L&S) 329]

and State of W.B. v. Tarun K. Roy [State of W.B. v. Tarun K. Roy, (2004) 1 SCC 347 : 2004 SCC (L&S) 225]). In such a case the principle of “equal pay for equal work” cannot be invoked.

42.9. The reference post with which parity is claimed under the principle of “equal pay for equal work” has to be at the same hierarchy in the service as the subject post. Pay scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see Union of India v. Pradip Kumar Dey [Union of India v. Pradip Kumar Dey, (2000) 8 SCC 580 : 2001 SCC (L&S) 56] and Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).

42.10. A comparison between the subject post and the reference post under the principle of “equal pay for equal work” cannot be made where the subject post and the reference

post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case [Harbans Lal v. State of H.P., (1989) 4 SCC 459 : 1990 SCC (L&S) 71]). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943]).

42.11. Different pay scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of “equal pay for equal work” would not be applicable. And also when the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see SBI case [SBI v. M.R. Ganesh Babu, (2002) 4 SCC

556 : 2002 SCC (L&S) 568]).

42.12. The priority given to different types of posts under the prevailing policies of the Government can also be a relevant factor for placing different posts under different pay scales. Herein also, the principle of “equal pay for equal work” would not be applicable (see State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822]).

42.13. The parity in pay, under the principle of “equal pay for equal work”, cannot be claimed merely on the ground that at an earlier point of time the subject post and the reference post, were placed in the same pay scale. The principle of “equal pay for equal work” is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see State of W.B. v. Minimum Wages Inspectors Assn. [State of W.B. v. W.B. Minimum Wages Inspectors Assn., (2010) 5 SCC 225 : (2010) 2

SCC (L&S) 1]).

42.14. For parity in pay scales under the principle of “equal pay for equal work”, equation in the nature of duties is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see U.T. Chandigarh, Admn. v. Manju Mathur [U.T. Chandigarh, Admn. v. Manju Mathur, (2011) 2 SCC 452 : (2011) 1 SCC (L&S) 348]).

42.15. There can be a valid classification in the matter of pay scales between employees even holding posts with the same nomenclature i.e. between those discharging duties at the headquarters, and others working at

the institutional/sub-office level (see Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]), when the duties are qualitatively dissimilar.

42.16. The principle of “equal pay for equal work” would not be applicable, where a differential higher pay scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see Hukum Chand Gupta case [Hukum Chand Gupta v. ICAR, (2012) 12 SCC 666 : (2013) 3 SCC (L&S) 493]).

42.17. Where there is no comparison between one set of employees of one organisation, and another set of employees of a different organisation, there can be no question of equation of pay scales under the principle of “equal pay for equal work”, even if two organisations have a common employer. Likewise, if the management and control of two organisations is with different entities which are

independent of one another, the principle of “equal pay for equal work” would not apply (see S.C. Chandra case [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897 : 2 SCEC 943] and National Aluminium Co. Ltd. case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353]).

48.It is clear from the above judgment that the Petitioners are entitled for the same pay as stipulated in the Regulations for performance of their duty on par with the regularly appointed Assistant Professors.

49.When it comes to the question of Regularization of service as Assistant Professor which is claimed by the Petitioners, this Court is not inclined to grant this relief. Where the temporary or ad hoc appointment is continued for a long time, the Court presumes that there is need and warrant for a regular post and accordingly considers regularization. But, there is no rule of thumb in such matters. The Court will have to look into the relevant facts and circumstances of a given case

before ordering for regularization of service. In the present case, the issue of regularization will not be confined only to the petitioners and it involves nearly 310 temporary teaching fellows whose services are utilized by the respondent University. Therefore, mechanically ordering for regularization will have a cascading effect on the cadre strength, policy of reservation and financial implications. The Petitioners have the distinct advantage under the UGC Regulations and AICTE Regulations for counting their past services at the time of direct / regular recruitment. The Petitioners have all the qualifications and they have been appointed by a properly Constituted Committee and therefore they can be accommodated in the vacant posts as and when the regular appointment takes place. It is only during the regular appointment, the cadre strength is fixed as per the requirements and the funds allocated by the Finance Committee and it will be even more easier and proper to accommodate the Petitioners while carrying out the process of regular appointments.

50.The Anna University attempted to go ahead with the regular appointments during the year 2015. However, it became a subject matter

of challenge by pointing out various deficiencies and as a result of the same, the recruitment process was stalled. The University can easily plug these holes and withdraw the earlier notification issued in the year 2015 and come up with a fresh notification by properly complying with all the requirements. This can be done immediately by the University without wasting any more time so that the regular appointment can take place and the Teaching Fellows who have been serving for a long-time will also get a priority to get appointed in the regular post by counting the past services and they will at least know where they stand. This Court earnestly hopes that the Anna University takes cue from the observations made by this Court and take immediate steps to go ahead with the fresh recruitment process by fulfilling all the requirements.

51. In view of the above discussion, this Court orders as follows:

[a] The Notifications / Advertisements dated 07.06.2019 and 19.12.2019 are hereby quashed and accordingly W.P.Nos.18359/2019, 35866/2019 and W.P.No.255 of 2020 are hereby allowed.

[b] Since the practice of engaging teachers on hourly basis has been stopped by the Anna University, the same is recorded and W.P.Nos.22621, 22627, 22560 and 22606 of 2019 are disposed of.

[c] The Petitioners are directed to be engaged as Temporary Assistant professors with effect from 01.12.2020, by the Respondent University until the regular recruitment is completed and vacant posts are filled up. At the time of filling up the posts on a regular basis, the observations made by this Court in Paragraph No.49, shall be followed scrupulously. W.P.Nos.19958/2019, 20268/2019, 21393/2019, 24286/2019, 21619/2019 32076/2019, 1079/2020 1665/2020, 22105/2019, 35583/2019, 8431/2017, 21578/2019, W.P.(MD).No.24819/2019 and W.P.(MD).No.4887/2019 are disposed of accordingly.

[d] Considering the financial burden that will be incurred by the Anna University, this Court is not inclined to order payment of salary to the Petitioners on par with the monthly gross salary of a regularly

W.P(MD).No.24819/2018..etc Batch of 2020

appointed Assistant Professor, for the past services. However, immediately on engaging the services of the Petitioners as directed in Clause (c), University shall pay the Petitioners the monthly gross salary of a regularly appointed Assistant Professor. W.P.Nos.8169, 8170, 8172 and 8512 of 2020, are disposed of accordingly.

[e] Cont.P(MD) Nos.945 and 946 of 2019 are hereby closed.

No costs. Consequently, all the connected miscellaneous petitions are closed.

09.11.2020

Internet: Yes

Index : Yes/No

KP

cc

To

1.The Registrar,
Anna University,
Sardar Patel Road,
Chennai 600 025.

2.The Dean,
University College of Engineering,
Anna University Constituent College,
Nagercoil.

W.P(MD).No.24819/2018..etc Batch of 2020

N.ANAND VENKATESH, J.
KP

Pre Delivery Common Order in
WP.(MD).No.24819 of 2018 & W.P.No.8431 of 2017 &
W.P.Nos. 19958, 18359, 20268, 21393, 21578, 21619,
22105, 22560, 22606, 22621, 22627,24286, 32076,
35583, 35866 of 2019 & W.P.Nos.255, 1079, 1665,
8169, 8170, 8172, 8512 of 2020 &
W.P(MD).No.4887 of 2019 &
Cont.P.(MD).Nos.945 & 946 of 2019

09.11.2020

