

GAHC010032462020



2026:GAU-AS:10922

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/938/2020

ANUPAM DAS AND 4 ORS.

S/O- TRIDIP RANJAN DAS, R/O- ARYA NAGAR, P.O. GOPINATH NAGAR,
DIST.- KAMRUP, ASSAM, PIN- 781016.

2: SAMARJIT DAS

S/O- SARAL KUMAR DAS

R/O- CHAPAR

P.O. CHAPAR

DIST- DHUBRI

ASSAM

PIN- 783371.

3: ATOWAR UL ISLAM

S/O- ABDUL MOMIN SK.

R/O- EIDGAH PATH

HOUSE NO. 12

P.O. DISPUR

SARUMOTORIA

DIST.- KAMRUP

ASSAM

PIN- 781006.

4: NABANITA DAS

D/O- LT. DIPAK KR. DAS

R/O- HOUSE NO. 16

SARVODAYA PATH

ABC

DIST.- KAMRUP

ASSAM

PIN- 781005.

5: BISWAJIT DAS

S/O- DHIREN DAS

R/O- PASCHIM BORAGAON

BAMUNPARA
DIST.- KAMRUP
ASSAM
PIN- 781035

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMM. AND SECY., GOVT. OF ASSAM, HIGHER EDUCATION
DEPTT., DISPUR, GHY.- 06, ASSAM.

2:THE DY. SECY.
GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GHY.- 06.

3:THE DIRECTOR
HIGHER EDUCATION DEPTT.
KAHILIPARA
GHY.-19.

4:THE VICE-CHANCELLOR
COTTON UNIVERSITY
PANBAZAR
GHY.- 781001.

5:THE REGISTRAR
COTTON UNIVERSITY
PANBAZAR
GHY.-01.

6:COTTON UNIVERSITY
PANBAZAR
GHY.-01
REP. BY THE REGISTRAR.

7:HIMANISH SHEKHAR DAS
S/O NOT KNOWN
R/O- HOUSE NO. 14D
ROY NAGAR
DIST.- KARIMGANJ
ASSAM.

8:PRAKASH CHAUHAN
ASSTT. PROFESSOR
COMPUTER SCIENCE AND I.T. DEPTT.
COTTON UNIVERSITY

GHY.-01
DIST. KAMRUP(M)
ASSAM.

9:KANGKANA BORA
ASSTT. PROFESSOR
COMPUTER SCIENCE AND I.T. DEPTT.
COTTON UNIVERSITY
GHY.-01
DIST.- KAMRUP(M)
ASSAM

Linked Case : WP(C)/5195/2020

DR MANOJ KUMAR DAS AND ANR
S/O. MATHURA MOHAN DAS
R/O. VILL. JAYANAGAR
MALIGAON
GUWAHATI-781011
DIST. KAMRUP (M)
ASSAM.

2: NOVONITA BARUAH
W/O. DR. JHON KUMAR KALITA
R/O. HOUSE NO. 116
OPPOSITE K.B. SOUND LAKHIMINAGAR
HATIGAON
GUWAHATI-781036
DIST. KAMRUP (M)
ASSAM.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT.
DISPUR
GUWAHATI-781006
ASSAM.

2:THE DIRECTOR

HIGHER EDUCATION DEPTT.
KAHILIPARA
GUWAHATI-781019.

3:THE VICE-CHANCELLOR

COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001.

4:THE REGISTRAR

COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001.

5:COTTON UNIVERSITY

PANBAZAR
GUWAHATI-781001
REP. BY THE REGISTRAR.

Linked Case : WP(C)/9474/2019

DR. ANUPAM DAS AND 4 ORS
S/O SRI TRIDIP RANJAN DAS
R/O ARYA NAGAR
P.O. GOPINATH NAGAR
DIST. KAMRUP
ASSAM
PIN-781016

2: SAMARJIT DAS
S/O SARAL KUMAR DAS
R/O CHAPAR
P.O. CHAPAR
DIST. DHUBRI
ASSAM
PIN-783371

3: ATOWAR UL ISLAM
S/O ABDUL MOMIN SK.
R/O EIDGAH PATH
HOUSE NO. 12
P.O. DISPUR
SARUMOTORIA
DIST. KAMRUP
ASSAM
PIN-781006

4: NABANITA DAS

D/O LT. DIPAK KR. DAS
R/O HOUSE NO. 16
SARVODAYA PATH
ABC
DIST. KAMRUP
ASSAM
PIN-781005

5: BISWAJIT DAS
S/O DHIREN DAS
R/O PASCHIM BORAGAON
BAMUPPARA
DIST. KAMRUP
ASSAM
PIN-781035
VERSUS

THE COMMISSIONER AND SECRETARY AND 5 ORS
TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT KAHILIPARA
GUWAHATI-19
ASSAM

2:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
HIGHER EDUCATION
DEPTT. DISPUR
GUWAHATI-781006

3:THE DIRECTOR
HIGHER EDUCATION DEPTT. KAHILIPARA
GUWAHATI-781019

4:THE VICE CHANCELLOR
COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001

5:THE REGISTRAR
COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001

6:COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001 REP. BY THE REGISTRAR

Linked Case : WP(C)/285/2020

MANOJ KUMAR DAS AND ANR.
S/O MATHURA MOHAN DAS
R/O JAYANAGAR
MALIGAON
GUWAHATI-781011
DIST. KAMRUP (M)
ASSAM

2: NOVONITA BARUAH
W/O DR. JHON KUMAR KALITA
R/O HOUSE NO. 116
OPP. K.B. SOUND LAKHINAGAR
HATIGAON
GUWAHATI-781036
DIST. KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HIGHER EDUCATION DEPTT. DISPUR
GUWAHATI-781006
ASSAM

2:THE DIRECTOR
HIGHER EDUCATION DEPTT. KAHILIPARA
GUWAHATI-781019

3:THE VICE CHANCELLOR
COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001

4:THE REGISTRAR
COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001

5:COTTON UNIVERSITY
COTTON UNIVERSITY
PANBAZAR
GUWAHATI-781001 REP. BY THE REGISTRAR

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. K. N. Choudhury, Sr. Advocate,
assisted by Mr. H. Das, Advocate.

For the Respondent(s) : Mr. D. Das, Senior Counsel assisted by
Mr. H. Rohman, Advocate appearing for
the respondent Nos. 4, 5 & 6 (Cotton
University) in WP(C) No. 938/2020 and
WP(C) No. 9474/2019,

Mr. P.D. Nair, Senior Advocate assisted by
Mr. H. Rohman, learned counsel,
appearing for the respondent Nos. 3 to 5
in WP(C) No. 285/2020 and WP(C) No.
5195/2020.

Mr. K. Gogoi, Standing Counsel, Higher
Education.

Mr. J. Roy, Sr. Advocate, assisted by Ms.
N. Kumari, Advocate for the private
respondents.

Date on which judgment
is reserved : N/A

Date of pronouncement
of judgment : **06.08.2026**

Whether the pronouncement
is of the operative part
of the judgment ? : **No.**

Whether the full judgment
has been pronounced : **Yes.**

JUDGMENT & ORDER (ORAL)

Heard Mr. K. N. Choudhury, learned Senior Counsel assisted by Mr. H. Das, learned counsel, appearing for the petitioners. Also heard Mr. D. Das, learned Senior Counsel assisted by Mr. H. Rohman, learned counsel appearing for the respondent Nos. 4, 5 & 6 (Cotton University) in WP(C) No. 938/2020 and WP(C) No. 9474/2019, Mr. P.D. Nair, learned Senior Advocate assisted by Mr. H. Rohman, learned counsel, appearing for the respondent Nos. 3 to 5 in WP(C) No. 285/2020 and WP(C) No. 5195/2020, Mr. K. Gogoi, learned Standing Counsel, Higher Education, and Mr. J. Roy, learned Senior Counsel assisted by Ms. N. Kumari, learned counsel appearing for the private respondents.

2] These four writ petitions raise a common question touching upon the entitlement of the petitioners to seek regularisation/absorption as Assistant Professors in different Departments of Cotton University. The petitioners have also assailed the consequential actions taken by the respondent authorities pursuant to the recruitment process initiated for filling up regular teaching posts. Since the issues arising for determination are substantially common and the factual background overlaps to a considerable extent, all the writ petitions were heard together and are being disposed of by this common judgment. However, wherever the factual circumstances pertaining to the individual writ petitions or the respective Departments materially differ, the same shall be noticed separately.

3] The petitioners in WP(C) Nos. 938/2020 and 9474/2019 were initially engaged in the Department of Computer Science & Information Technology of the erstwhile Cotton College between the years 2007 and 2009 under the

designation of Academic Counsellors. According to the petitioners, their appointments were preceded by public advertisements and a process of selection involving interviews conducted by the competent authority. It is their specific case that, notwithstanding the nomenclature of Academic Counsellor, they continuously discharged duties and responsibilities substantially identical to those performed by regular Assistant Professors, including classroom teaching, evaluation of answer scripts, preparation of question papers, curriculum development, examination-related functions, and other academic and administrative responsibilities ordinarily entrusted to members of the regular teaching faculty.

4] The petitioners in WP(C) Nos. 285/2020 and 5195/2020, on the other hand, were engaged in the Department of Biotechnology, presently known as the Department of Molecular Biology and Biotechnology, between the years 2008 and 2010. Their case likewise rests on the assertion that they were appointed pursuant to public advertisements followed by a process of selection and interview, and that throughout the period of their engagement they discharged teaching, academic and research responsibilities comparable to those discharged by regular Assistant Professors in the said Department.

5] The common thread running through all the four writ petitions is that the Departments in which the petitioners were engaged had been established with the approval of the Government of Assam and were catering to substantial teaching requirements generated by newly introduced academic programmes. According to the petitioners, although they were initially appointed under different designations, the respondent authorities continued to utilise their services uninterrupted for long periods and subsequently redesignated them

as Assistant Professors (Contractual), thereby recognising the true nature of the functions performed by them. It is their further case that they rendered continuous service for well over a decade and that the question of regularisation of their services remained under consideration at different administrative levels from time to time.

6] The respondents, however, dispute the very foundation of the petitioners' claim. According to the respondent University as well as the Higher Education Department, the petitioners were never appointed against sanctioned teaching posts in accordance with the statutory recruitment framework governing appointments to teaching positions. It is contended that the petitioners were engaged purely on contractual or ad hoc basis in connection with self-financing courses and that such engagements were dehors the statutory recruitment procedure governing appointments to regular teaching posts in Government Colleges and, subsequently, in the University.

7] It further appears that, during the pendency of the controversy relating to the claim for regularisation, the respondent University initiated a regular recruitment process for appointment to the posts of Assistant Professor by issuing advertisements inviting applications from eligible candidates. Some of the petitioners participated in the said recruitment process but were ultimately unsuccessful. Thereafter, the contractual engagements of the petitioners came to be discontinued, giving rise to the present batch of writ petitions wherein both the recruitment process and the consequential orders discontinuing their services have been called into question.

8] Mr. K. N. Choudhury, learned Senior Counsel appearing for the petitioners, submits that none of the petitioners can be described as backdoor entrants. It is

contended that their initial appointments were preceded by public advertisements inviting applications from eligible candidates and were followed by a process of interview conducted by the competent authorities. According to the learned Senior Counsel, the constitutional requirement of transparency and fairness underlying Articles 14 and 16 of the Constitution stood substantially satisfied at the very inception of their engagement and, therefore, their appointments cannot be equated with clandestine or arbitrary appointments made dehors the constitutional scheme governing public employment.

9] Learned Senior Counsel further submits that throughout the tenure of their engagement, the petitioners discharged duties which were in no manner distinguishable from those performed by regular Assistant Professors. It is contended that the designation of Academic Counsellor was merely nomenclatural and did not truly reflect either the nature of the work assigned to the petitioners or the responsibilities continuously discharged by them. Reliance is placed upon the subsequent redesignation of the petitioners as Assistant Professors (Contractual), as well as various official communications issued by the respondent authorities, to contend that the employer itself recognised the true character of the services rendered by the petitioners.

10] Elaborating the aforesaid submission, learned Senior Counsel contends that the Departments in question had a continuing and perennial requirement of teaching personnel and that the respondent authorities consciously retained the petitioners in service for more than a decade to meet such institutional requirements. According to the petitioners, after having continuously extracted work identical to that of regular Assistant Professors and thereafter redesignated them as Assistant Professors (Contractual), it is no longer open to

the respondents to deny them the consequential benefits merely by relying upon the original nomenclature of the post under which they entered service. The submission is that constitutional adjudication must look to the substance of the engagement rather than the label attached to it.

11] Learned Senior Counsel for the petitioners further submits that the principles laid down by the Constitution Bench of the Apex Court in ***Secretary, State of Karnataka v. Umadevi (3)***, reported in ***(2006) 4 SCC 1***, cannot be applied in a mechanical or isolated manner divorced from the subsequent evolution of service jurisprudence. It is argued that the later decisions of the Supreme Court have consistently emphasised the distinction between appointments which are “illegal” and those which are merely “irregular”, and have cautioned against employing the decision in ***Umadevi (3)*** (supra) as an instrument to perpetuate arbitrary or exploitative contractual engagements. In support of the aforesaid submissions, reliance has been placed upon the following decisions:

- (i) ***Jaggo v. Union of India***, reported in ***2024 SCC OnLine SC 3826*** (Paras 8, 9, 10, 19, 20, 26, 27 and 28);
- (ii) ***Shripal v. Nagar Nigam Ghaziabad***, reported in ***2025 SCC OnLine SC 221*** (Para 14);
- (iii) ***State of Jharkhand v. Kamal Prasad***, reported in ***(2014) 7 SCC 223*** (Paras 30 and 44);
- (iv) ***Dharam Singh v. State of Uttar Pradesh***, reported in ***2025 SCC OnLine SC 1735*** (Para 17);

- (v) ***Vinod Kumar v. Union of India***, reported in **2024 INSC 332** (Para 5);
- (vi) ***Amarendra Kumar Mohapatra v. State of Orissa***, reported in **(2014) 4 SCC 583** (Paras 43, 44 and 45);
- (vii) ***Narendra Kumar Tiwari v. State of Jharkhand***, reported in **(2018) 8 SCC 238** (Paras 7 and 8);
- (viii) ***Hiren Chandra Das v. State of Assam***, reported in **2024 SCC OnLine Gau 1880** (Para 34); and
- (ix) ***Rofiqul Islam v. State of Assam***, in **WP(C) No. 5304/2021** (Paras 4 and 6).

12] Relying upon the aforesaid authorities, learned Senior Counsel submits that while adjudicating claims for regularisation or absorption, the Court is not confined to the nomenclature of the post under which an employee initially entered service. Rather, the Court is required to examine the entire factual matrix, including the manner of entry into service, whether the initial engagement followed a transparent selection process, the qualifications possessed by the employee, the nature of duties continuously discharged, the length and continuity of service, and the conduct of the employer over the years. It is submitted that the cumulative effect of these circumstances must be assessed in order to determine whether the engagement was merely irregular or fundamentally illegal.

13] *Per contra*, Mr. D. Das, learned Senior Counsel and Mr. P.D. Nair, learned Senior Counsel, assisted by Mr. H. Rohman, learned Counsel appearing for the respondent Cotton University, submits that the petitioners were never appointed

against sanctioned teaching posts and that their engagements were contractual from the very inception. According to the learned Senior Counsel, there never existed any sanctioned cadre post known as Academic Counsellor under the statutory framework governing the erstwhile Cotton College and, at the relevant point of time, the entry-level teaching post in Government Degree Colleges was that of Lecturer, now redesignated as Assistant Professor. It is further submitted that no material has been produced to demonstrate that the petitioners were appointed through the recruitment process prescribed for appointment to regular teaching posts under the applicable statutory provisions.

14] It is further submitted on behalf of the respondent University that the advertisements relied upon by the petitioners themselves demonstrate that the recruitment was never undertaken for regular teaching posts. According to the respondents, the advertisements neither prescribed the qualifications mandated under the applicable UGC Regulations for appointment as Assistant Professor nor specified the number of sanctioned vacancies sought to be filled. It is, therefore, contended that the petitioners cannot equate their initial contractual engagement as Academic Counsellors with appointment to regular teaching posts governed by the statutory recruitment framework.

15] Learned Senior Counsels appearing for the respondent Cotton University further submits that the petitioners were engaged only in connection with self-financing courses introduced by the erstwhile Cotton College to cater to emerging academic requirements and that their remuneration was paid out of the revenue generated from such courses and not from Government funds earmarked for sanctioned teaching posts. It is submitted that the contractual terms governing their engagement clearly contemplated that their services

would continue only so long as the courses remained operational or the workload so required. According to the University, the very nature of the engagement negates any claim that the petitioners were appointed against regular cadre posts.

16] It is further contended that the petitioners cannot claim any special or preferential right merely because they continued in service for a considerable period. Learned Senior Counsel submits that several other contractual teachers similarly engaged in the Department of Computer Science & Information Technology and in other self-financing courses also ceased to continue upon regular recruitment being undertaken by the University. According to the respondents, the continuation of the petitioners was purely on account of administrative exigencies and cannot confer any enforceable right to regularisation or absorption.

17] Learned Senior Counsels further submits that many of the petitioners did not possess the qualifications prescribed under the applicable UGC Regulations for appointment as Assistant Professors at the time of their initial engagement and that some of them continued to remain ineligible even when the present writ petitions were instituted. It is contended that the educational qualifications prescribed for contractual engagement under the advertisements cannot be equated with the minimum qualifications prescribed under the UGC Regulations governing appointments to regular teaching posts. Consequently, according to the respondents, the petitioners cannot claim parity with regularly appointed Assistant Professors.

18] Referring to the Resolution of the Executive Council dated 17.11.2018, learned Senior Counsel submits that the University never resolved to regularise

the services of contractual teachers. According to him, the only decision taken by the Executive Council was that contractual teachers would be at liberty to participate in the recruitment process initiated for filling up regular posts and that, while making such recruitment, due weightage to their experience might be considered in accordance with law. It is submitted that this decision/resolution of the Executive Council has not been challenged by the petitioners. It is, therefore, submitted that the petitioners have misconstrued the said Resolution as a decision to regularise their services, whereas no such policy decision was ever taken by the competent authority.

19] Learned Senior Counsels also submits that some of the petitioners, having consciously participated in the recruitment process initiated pursuant to the advertisement dated 19.06.2019 without any protest, cannot now be permitted to assail the very same selection process merely because they were unsuccessful. Invoking the well-settled principle that a candidate who participates in a selection process with full knowledge of its terms cannot subsequently challenge the process after being declared unsuccessful, it is contended that the writ petitions questioning the recruitment process are liable to be rejected on this ground alone.

20] It is lastly contended on behalf of the respondent University that appointment to the post of Assistant Professor in a University is governed entirely by the UGC Regulations prescribing the minimum qualifications and the procedure for direct recruitment. Since neither the UGC Regulations nor the statutory framework governing the University recognizes regularisation as a mode of appointment to teaching posts, it is submitted that no writ can be issued directing regularisation in derogation of the statutory scheme. In support

of the aforesaid submissions, reliance has been placed upon the following decisions.

- (i) ***R.N. Nanjundappa v. T. Thimmiah***, reported in **(1972) 1 SCC 409**;
- (ii) ***State of Orissa v. Sukanti Mohapatra***, reported in **(1993) 2 SCC 486**;
- (iii) ***K.C. Joshi v. Union of India***, reported in **1992 Supp (1) SCC 272**;
- (iv) ***Dr. M.A. Haque v. Union of India***, reported in **(1993) 2 SCC 213**;
- (v) ***Dr. Arundhati A. Pargaonkar v. Union of India***, reported in **1994 Supp (3) SCC 380**;
- (vi) ***State of Karnataka v. M.L. Kesari***, reported in **(2010) 9 SCC 247**;
- (vii) ***State of Tamil Nadu v. A. Singamuthu***, reported in **(2017) 4 SCC 113**; and
- (viii) ***Mohd. Mustafa v. Union of India***, reported in **2021 SCC OnLine SC 1063**.

21] Mr. K. Gogoi, learned Standing Counsel appearing for the Higher Education Department, while adopting the submissions advanced on behalf of the respondent University, additionally submits that, at the relevant point of time, the erstwhile Cotton College was a Government Degree College and appointments to teaching posts therein were governed exclusively by the provisions of the Assam Education Service Rules, 1982, framed under the proviso to Article 309 of the Constitution of India.

22] Elaborating the aforesaid submission, learned Standing Counsel contends that Rule 5 of the Assam Education Service Rules, 1982 provided that recruitment to the post of Lecturer in Government Degree Colleges could only be made by direct recruitment, while Rule 6 mandated that such recruitment should be made only on the recommendation of the Assam Public Service Commission. According to the learned Standing Counsel, the Rules neither recognised any cadre post known as Academic Counsellor nor authorised appointment of contractual or ad hoc teaching personnel against regular teaching posts. Consequently, it is submitted that the initial engagement of the petitioners did not conform to the statutory recruitment mechanism prescribed under the said Rules.

23] Learned Standing Counsel further submits that where a statute prescribes a particular mode of appointment, the authorities are bound to adhere strictly to the procedure so prescribed and no alternative method of recruitment can be evolved by executive or administrative action. Since the petitioners admittedly did not enter service through the procedure contemplated under the Assam Education Service Rules, 1982, no legal right can accrue in their favour merely because they continued in service for a considerable length of time. It is, therefore, submitted that the equitable considerations pressed into service by the petitioners cannot override statutory provisions framed under Article 309 of the Constitution.

24] Learned Standing Counsel has also contended that some of the petitioners voluntarily participated in the recruitment process initiated pursuant to the advertisement dated 19.06.2019 for appointment to regular posts of Assistant Professor but were unsuccessful. It is submitted that, having participated in the

selection process without raising any objection, the petitioners are estopped from questioning either the advertisement or the selection process after their failure to secure appointment. The well-settled principle that a candidate cannot approbate and reprobate in the same breath is pressed into service in support of the aforesaid contention.

25] Distinguishing the authorities relied upon by the petitioners, learned Standing Counsel submits that the said decisions arose in entirely different factual and statutory settings and cannot dilute the binding principles laid down by the Constitution Bench in ***Umadevi (3)*** (supra), which, according to the respondents, continues to govern the field. It is argued that where statutory recruitment Rules framed under Article 309 are in force, no Court can direct regularisation or permanent absorption in violation thereof. In support of the aforesaid submissions, reliance has been placed upon:

- (i) ***Secretary, State of Karnataka v. Umadevi (3)***, reported in **(2006) 4 SCC 1**;
- (ii) ***State of Karnataka v. M.L. Kesari***, reported in **(2010) 9 SCC 247**;
- (iii) ***Ganesh Digambar Jambhrunkar v. State of Maharashtra***, reported in **2023 SCC OnLine SC 1417**;
- (iv) ***Union of India v. Ilmo Devi***, reported in **(2021) 20 SCC 290**;
- (v) ***Vibhuti Shankar Pandey v. State of Madhya Pradesh***, reported in **(2023) 3 SCC 69**;
- (vi) ***State of Gujarat v. R.J. Pathan***, reported in **(2022) 5 SCC 394**;

- (vii) ***Union of India v. Mahendra Singh***, reported in **2022 SCC OnLine SC 909**;
- (viii) ***Tajvir Singh Sodhi v. State of Jammu & Kashmir***, reported in **(2023) 17 SCC 147**;
- (ix) ***Official Liquidator v. Dayanand***, reported in **(2008) 10 SCC 1**;
- (x) ***B.N. Nagarajan v. State of Karnataka***, reported in **(1979) 4 SCC 507**;
- (xi) ***National Insurance Co. Ltd. v. Pranay Sethi***, reported in **(2017) 16 SCC 680**;
- (xii) ***Trimurthi Fragrances (P) Ltd. v. Government of NCT of Delhi***, reported in **2022 SCC OnLine SC 1247**; and
- (xiii) ***Dr. Kishore Kumar Deka v. State of Assam***, passed in **WP(C) No.7982/2015**.

26] Mr. J. Roy, learned Senior Counsel appearing for the private respondents, submits that although the candidates selected pursuant to the fresh recruitment process have been impleaded as private respondents, no substantive relief has been claimed against them.

27] I have given my prudent consideration to the arguments advanced by the learned counsel appearing for the respective parties and have also considered the materials available on record. I have also duly considered the case laws cited at the Bar.

28] The rival submissions fall for consideration in the backdrop of the constitutional principles governing public employment, the statutory framework applicable to appointments in Government Colleges and Universities, and the evolution of the law relating to regularisation of long-serving contractual and ad hoc employees.

29] Accordingly, the following questions arise for determination in the present batch of writ petitions:

(i) Whether the initial engagement of the petitioners was illegal or merely irregular, having regard to the manner of their appointment, the nature of the recruitment process undertaken, the qualifications possessed by them, and the statutory framework governing appointments to teaching posts in the erstwhile Cotton College and the respondent University?

(ii) Whether the subsequent redesignation of the petitioners as Assistant Professors (Contractual) amounted to a fresh appointment to a distinct post or merely recognised and formalised the nature of the duties and responsibilities which the petitioners had been continuously discharging since their initial engagement?

(iii) Whether, notwithstanding the principles enunciated by the Constitution Bench in ***Umadevi (3)*** (supra), the petitioners have established a case for regularisation, absorption or any other equitable relief having regard to Articles 14 and 16 of the Constitution, the doctrine of legitimate expectation, and the subsequent development of service jurisprudence by the Supreme Court?

30] Before adverting to the rival factual contentions, it would be apposite to notice the legal principles governing the field. It is trite that an ad hoc or contractual appointment does not, by itself, ripen into a regular appointment merely by efflux of time. Such appointments are ordinarily conceived as stop-gap arrangements intended to meet temporary administrative exigencies until regular recruitment is undertaken in accordance with the applicable statutory Rules. Equally well settled, however, is the principle that where such stop-gap arrangements continue for prolonged periods, the Court is required to examine whether the initial engagement was fundamentally illegal or merely suffered from procedural irregularities. It is this distinction between an illegal appointment and an irregular appointment which constitutes the bedrock of the jurisprudence relating to regularisation.

31] The Constitution Bench of the Apex Court in ***Umadevi (3)*** (supra), while reiterating that appointments made dehors the constitutional scheme governing public employment cannot ordinarily be regularised, nevertheless recognised a distinction between appointments which are illegal and those which are merely irregular. The Apex Court observed that where duly qualified persons had been appointed against duly sanctioned vacant posts, though with certain procedural irregularities, and had continued in service for a considerable period without the protection of interim orders passed by Courts or Tribunals, their cases could be considered for regularisation as a one-time measure. Paragraph 53 of the judgment, which has since formed the foundation of the subsequent jurisprudence on the subject, is extracted hereinbelow for ready reference:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan

(supra), 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 the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.** The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. (Emphasis supplied)”

32] The above observations unmistakably demonstrate that while reaffirming the constitutional mandate requiring appointments to public posts to be made through a fair and transparent process, the Constitution Bench simultaneously carved out a limited exception in respect of certain irregular appointments. At the same time, the Apex Court cautioned that such exception could not thereafter become a means of bypassing the constitutional requirement of regular recruitment or of perpetuating appointments made dehors the statutory framework.

33] The scope and ambit of paragraph 53 of **Umadevi (3)** (supra) came to be explained in greater detail by the Apex Court in **M.L. Kesari** (supra). The Apex Court clarified that the expression “one-time measure” employed in paragraph 53 of **Umadevi (3)** was not intended to deprive otherwise eligible employees

merely because the employer failed to undertake the exercise within the period contemplated therein. It was held that every Department or instrumentality of the State was under an obligation to undertake a one-time exercise to identify employees who had completed ten years or more of continuous service, without the protection of interim orders, against vacant posts and possessing the requisite qualifications, and to consider their cases for regularisation. The Court further clarified that omission on the part of the employer to undertake such an exercise, or to include otherwise eligible employees therein, would not extinguish their entitlement to be considered in terms of paragraph 53 of ***Umadevi (3)*** (supra). The relevant observations are reproduced hereinbelow:

“9. The term ‘one-time measure’ has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily- wage or ad hoc employees who have been working for more than ten years without the intervention of Courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. **On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in Courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily- wage/adhoc/those employees who had put in 10 years of continuous service as on**

10.4.2006 without availing the protection of any interim orders of Courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. **The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any Court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.** (Emphasis supplied)”

34] The decision in ***M.L. Kesari*** (supra), thus, does not dilute the ratio laid down in ***Umadevi (3)*** (supra). On the contrary, it explains the manner in which the limited exception recognised in paragraph 53 is required to be implemented. The emphasis of the decision is that the benefit contemplated under ***Umadevi (3)*** (supra) cannot be defeated merely because the employer failed to undertake the one-time exercise within the period indicated therein or omitted to consider

all employees who were otherwise entitled to such consideration. The judgment, therefore, reinforces the principle that while regularisation cannot become an alternate mode of recruitment, employees falling within the limited exception recognised in ***Umadevi (3)*** (supra) cannot be denied consideration solely on account of administrative inaction or omission on the part of the employer.

35] Likewise, in ***Jaggo*** (supra), after surveying the earlier precedents, the Apex Court emphasised that ***Umadevi (3)*** (supra) was intended to prevent backdoor entries and illegal appointments, and not to perpetuate exploitative contractual engagements extending over decades. The Apex Court observed that where employees had undergone a transparent process of selection, continuously discharged duties of a perennial nature, and performed functions integral to the administration, procedural irregularities at the inception ought not to be employed indefinitely to deny substantive rights. The relevant paragraphs of the aforesaid judgment are extracted hereinbelow for ready reference:

*“12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. **Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.***

*13. The claim by the respondents that these were not regular posts lacks merit, **as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled.** It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination*

demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

19. It is evident from the foregoing that the appellants' roles were not only essential but also indistinguishable from those of regular employees. Their sustained contributions over extended periods, coupled with absence of any adverse record, warrant equitable treatment and regularization of their services. Denial of this benefit, followed by their arbitrary termination, amounts to manifest injustice and must be rectified.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in **Vinod Kumar v. Union of India**, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. **When public sector entities engage in misuse**

of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- **Misuse of “Temporary” Labels:** Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.
- **Arbitrary Termination:** Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.
- **Lack of Career Progression:** Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.
- **Using Outsourcing as a Shield:** Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.
- **Denial of Basic Rights and Benefits:** Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. **While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are**

often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between “illegal” and “irregular” appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country. (Emphasis supplied)”

36] The aforesaid decision of the Apex Court reiterates that the constitutional obligation of the State is not confined merely to ensuring transparency at the stage of initial recruitment. Equally important is its obligation to function as a model employer by refraining from retaining employees for years together under temporary or contractual designations while continuously extracting work of a

regular and perennial nature. The judgment cautions that **Umadevi (3)** (supra) cannot be construed as a charter permitting the indefinite continuation of such arrangements, nor can procedural irregularities at the inception be invoked perpetually to defeat otherwise legitimate claims founded upon long, uninterrupted service rendered against continuing institutional requirements.

37] Further, in **Shripal** (supra), the Apex Court reiterated that where employees have been appointed through a transparent process, have continuously discharged duties of a perennial nature over a long period of time, and their appointments are at best irregular and not illegal, the employer cannot defeat their legitimate claim merely by relying upon the contractual or temporary description of their engagement. The Apex Court emphasised that the distinction between illegal appointments and irregular appointments, recognised in **Umadevi (3)** (supra) and explained in **M.L. Kesari** (supra), remains the governing principle while examining claims for regularisation.

38] Likewise, in **Vinod Kumar** (supra), the Apex Court once again underscored that constitutional courts are required to examine the substance of the engagement rather than its mere nomenclature. It was observed that prolonged utilisation of employees against continuing institutional requirements, coupled with a transparent mode of initial selection, constitutes a relevant circumstance while considering claims founded upon the principles recognised in **Umadevi (3)** (supra). The Apex Court reiterated that the State cannot indefinitely continue contractual engagements where the requirement itself is regular and perennial. The relevant paragraph of the aforesaid judgment read as under: -

“5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has

evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status."

39] Similarly, in **Dharam Singh** (supra), the Apex Court emphasised that the State, being a model employer, cannot indefinitely postpone regular recruitment and simultaneously continue to utilise the services of employees on contractual or temporary arrangements for years together. The Apex Court observed that where the employer itself has permitted such arrangements to continue despite the existence of a recurring and perennial requirement, it cannot subsequently rely upon its own omission to deny the employees the protection available under law. The judgment further reiterates that **Umadevi (3)** (supra) was never intended to legitimise exploitative employment practices or to permit the State to derive advantage from its own inaction.

40] The aforesaid decisions, when read together with **Umadevi (3)** (supra) and **M.L. Kesari** (supra), demonstrate a consistent evolution of the law. While preserving the constitutional mandate of recruitment through a fair and transparent process, the Apex Court has repeatedly cautioned that constitutional courts must also examine the nature of the initial engagement, the transparency of the selection process, the continuity of service, the existence of a perennial institutional requirement, and the conduct of the employer over the years. These decisions consistently emphasise that while **Umadevi (3)** (supra) continues to govern appointments to public service, its ratio cannot be applied

mechanically so as to perpetuate unfair labour practices or enable the State to take advantage of its own failure to undertake timely regular recruitment.

41] It is against this backdrop that the decision in ***Sukhendu Bhattacharjee v. The State of Assam, in Civil Appeal No(s). 4514/2025***, assumes significance wherein the Apex Court, after considering the earlier regularization judgments, categorically rejected the State's contention that regularization must fail merely because the initial engagement was not against a sanctioned post, particularly when the workers were engaged for decades and despite the state regularizing thirty thousand similarly situated workers, the state cannot adopt a rigid interpretation of the decision of the Apex Court in ***Umadevi (3)*** (supra) to deny the remaining workers. In the aforesaid judgment the Apex Court in the context of the reliance placed by the High Court in the judgment under appeal on ***Umadevi (3)*** (supra) and ***ML Kesari*** (supra) held that the ratio of the aforesaid decisions were misplaced in the facts of the case. Relevant paragraphs in this regard are extracted herein below for ready reference:-

*“59. In our considered view, the reliance placed by the Division Bench on ***Umadevi*** (supra) and ***M.L. Kesari*** (supra) was misplaced in the facts of the present case. Paragraph 53 of ***Umadevi*** (supra) carved out a limited exception for those employees who had worked for more than ten years in duly sanctioned posts without the protection of Court orders. However, the appellants were not seeking regularization on the basis of that one-time exception. Their claim is rooted in the Cabinet decision dated 22nd July, 2005, by which the State consciously decided to regularize the services of Work Charged and Muster Roll workers engaged prior to 1st April, 1993, and pursuant to which nearly 30,000 similarly situated employees were in fact regularized by creation of posts. The appellants claimed parity with that very class and sought equal treatment under [Article 14](#) of the Constitution. The issue, therefore, is not one of invoking the limited exception carved out in ***Umadevi*** (supra), but of ensuring that employees who stand on the same footing are treated alike.*

60. It is a settled principle that equals must be treated equally, and if persons similarly placed are treated differently without a rational basis, it

would amount to a violation of [Article 14](#) of the Constitution. If two sets of employees stand on the same footing in terms of date of engagement, nature of duties, length of service and eligibility under a declared policy, the State cannot extend a benefit to one large group and deny it to the smaller group without demonstrating a valid distinction. Equality does not allow selective or partial implementation of a policy. Once a policy decision is taken to benefit a defined class, it must be applied uniformly to all who satisfy the prescribed conditions.

73. As regards the contention of Shri Gupta that after the decision in [Umadevi](#) (supra) no regularization can be effected in respect of employees who were not appointed against duly sanctioned posts, we are unable to accept such a sweeping proposition in the facts of the present case. The submission proceeds on the premise that [Umadevi](#) (supra) lays down an absolute and inflexible embargo against all forms of regularization irrespective of the surrounding circumstances. Such an interpretation, in our considered view, does not reflect the true scope and ratio of the decision.

75. Recently, this Court in *Bhola Nath* (supra) while relying on the judgment of *Jaggo* (supra), *Shripal* (supra), and *Dharam Singh* (supra) observed as follows:-

“13.6. This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of “part-time”, “contractual” or “temporary” in perpetuity and thereby exploiting them by not regularizing their positions. In Jaggo v. Union of India, this Court underscored that government departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization.

13.7 In Shripal v. Nagar Nigam, and Vinod Kumar v. Union of India, this Court cautioned against a mechanical and blind reliance on Umadevi (supra) to deny regularization to temporary employees in the absence of statutory rules. It was held that Umadevi (supra) cannot be employed as a shield to legitimise exploitative engagements continued for years without undertaking regular recruitment. The Court further clarified that Umadevi itself draws a distinction between appointments that are “illegal” and those that are merely “irregular”, the latter being amenable to regularization upon fulfilment of the prescribed conditions.

13.8. In Dharam Singh v. State of U.P., this Court strongly deprecated the culture of “ad-hocism” adopted by States in their capacity as employers. The Court criticised the practice of outsourcing or informalizing recruitment as a means to evade regular employment obligations, observing that such measures perpetuate precarious working conditions while circumventing fair and lawful engagement practices.

13.9. The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery

of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason.” (Emphasis supplied)

76. What emerges from the principles enunciated in the aforesaid decisions is that the State cannot rely upon the mere form of engagement to deny fair and equitable treatment to employees who have served it for long years. The consistent thread running through these judgments is that **Umadevi** (supra) cannot be invoked as a blanket barrier to justify prolonged and continued engagements of a temporary or ad hoc nature, especially where the employees have been discharging essential and recurring functions of the State. The Court has repeatedly emphasised that the distinction between “illegal” and “irregular” appointments must be kept in view, that long and continuous service is a relevant consideration, and that the State, as a model employer, is under a constitutional obligation to act with fairness, consistency and reasonableness. The practice of retaining employees for decades under deceptively titled designations, while simultaneously extracting regular work integral to the administration, has been disapproved consistently.

77. Applying these principles to the present case, it is evident that engaging workers on muster rolls was a consistently employed policy of the State which continued for prolonged period of time. The appellants were not engaged for sporadic or seasonal purposes but were taken on muster rolls and have rendered continuous service for decades in departments performing regular governmental functions. The State itself acknowledged the magnitude of the issue and framed a Cabinet policy to regularize similarly situated workers, acting upon it in respect of nearly 30,000 employees. In such circumstances, to deny consideration to the fraction of remaining eligible workers including the appellants, by taking shelter under a rigid reading of **Umadevi** (supra) would defeat the very principles of fairness and non-arbitrariness that this Court has consistently upheld.

78. In the aforesaid backdrop, we are unable to accept the contention of the State that the appellants cannot be granted regularization on the ground that they were not initially appointed against duly sanctioned posts. The State, having engaged the appellants prior to 1st April, 1993, utilised their services continuously for decades, and having itself framed and implemented a Cabinet policy regularizing nearly 30,000 similarly situated workers, cannot now exclude the appellants by taking shelter

*behind a rigid or technical reading of **Umadevi** (supra). In absence of any cogent distinction or reasoned decision justifying such exclusion, the action of the State is manifestly arbitrary. It is inconsistent with its obligation to function as a model employer and does not withstand scrutiny under Article 14 of the Constitution. Conclusion*

79. In view of the discussion made hereinabove, the impugned judgment dated 8th June, 2017 passed by the Division Bench cannot be sustained and is set aside and the judgment of the learned Single Judge dated 20th December, 2013 is affirmed.

Consequently, we pass the following directions:-

I. The appellants shall be treated as regularised in service in terms of the Cabinet decision dated 22nd July, 2005 and from the date on which similarly placed 30,000 employees were given benefit of the said Cabinet decision. II. The State of Assam shall identify and verify the eligible appellants and, where necessary, create supernumerary posts to facilitate their regularization.

III. Upon regularization, the appellants shall be entitled to all consequential benefits, including fixation of pay in the regular scale, continuity of service, and all applicable pensionary and post-retiral benefits in the same terms, as were extended to similarly situated 30,000 employees.

IV. In case of retired appellants, they shall be granted notional regularization with consequential monetary benefits and arrears from the relevant date until their superannuation for the purpose of recalculating pension, gratuity, and terminal dues. V. In case of deceased appellants, arrears and other benefits shall be released to their legal heirs in accordance with law.

VI. The entire exercise, including the calculation and payment of all financial arrears, shall be completed within a period of one year from the date of this judgment.

VII. We make it clear that the benefit of the above directions shall only be applicable to the appellants who were working in the departments of the State before the cut-off date prescribed in Cabinet decision dated 22nd July, 2005 i.e. before 1st April, 1993.”

42] At this stage, Mr. K. Gogoi, learned Standing Counsel appearing for the Higher Education Department, has placed reliance upon the recent judgment of

the Apex Court in ***Najima Khatun & Others v. State of West Bengal & Others***, reported in **2026 SCC OnLine SC 1313**, in support of the contention that the petitioners are not entitled to regularization on the basis of the decisions of the Apex Court in the case of ***Jaggo*** (supra) and ***Sukhendu Bhattacharjee*** (supra) as the Apex Court had clearly held that the aforesaid two cases are rendered to its own facts rather than laying down law which is binding under Article 141 of the Constitution of India.

43] This Court has carefully considered the said judgment. The factual foundation upon which the Apex Court proceeded in ***Najima Khatun*** (supra) is materially different from the case at hand. The controversy before the Apex Court arose out of appointments which, upon a detailed factual examination, were found to be illegal and backdoor appointments, dehors the prescribed recruitment procedure and unsupported by any transparent process of selection. The Court was, therefore, dealing with appointments which were illegal in their inception. Such appointments, in the considered opinion of this Court, are plainly incapable of being regularised. There can scarcely be any dispute with that proposition. The constitutional mandate contained in Articles 14 and 16 admits of no compromise in cases where entry into public service itself is illegal.

44] The present case, however, stands on an entirely different footing. Here, the petitioners entered service pursuant to public advertisements issued by the respondent institution. They participated in a process of selection and were engaged because the respondent itself required qualified teaching personnel for newly introduced academic programmes. It is nobody's case that the petitioners rendered service only by way of guest or part-time faculty. The necessity for their engagement, therefore, is not in dispute. The materials on record further

demonstrate that they continuously discharged teaching and academic functions against recurring institutional requirements for well over a decade. Apposite that during the course of such engagement, they were successively redesignated as Assistant Professors (Contractual) without any fresh process of recruitment, while continuing to perform substantially the same duties and responsibilities which they had been discharging from the very inception. The redesignation thus recognised the true nature of the engagement rather than creating a new one.

45] The prolonged continuation of ad hoc or contractual arrangements in the present case is itself a matter of concern. Ad hoc appointments are intended to meet temporary exigencies. They are not meant to become a permanent substitute for regular recruitment. If an employer continues to extract work of a regular and perennial nature from employees engaged on ad hoc or contractual basis for years together, despite the existence of a continuing institutional requirement, the vice lies not in the conduct of the employees but in the failure of the employer to undertake regular recruitment within a reasonable period. It is precisely such continuance of ad hocism that constitutional jurisprudence seeks to discourage.

46] Even assuming, for the sake of argument, that the subsequent decisions in **Jaggo** (supra) and **Sukhendu Bhattacharjee** (supra) are left out of consideration in view of the observations made in **Najima Khatun** (supra), the conclusion in the present case would remain unaltered. The entitlement of the petitioners can be determined on the basis of the principles laid down by the Constitution Bench in **Umadevi** (3) (supra), as explained in **M.L. Kesari** (supra). Those decisions continue to recognise the distinction between illegal

appointments and irregular appointments. Where the initial appointment is illegal, being dehors the constitutional scheme or without any transparent process of selection, the question of regularisation does not arise. However, where the initial appointment is not illegal but, at the highest, suffers from an irregularity, and the employer itself continues such engagement for years together against a recurring and perennial institutional requirement, the constitutional infirmity lies not in the employee continuing in service but in the employer perpetuating an arrangement which ought to have been regularised by undertaking timely recruitment in accordance with law.

47] The extraordinary jurisdiction of this Court under Article 226 of the Constitution exists to remedy illegality wherever it is found. It cannot remain a silent spectator where the employer itself has continued an arrangement which the constitutional scheme never contemplated as permanent. To deny relief in such circumstances solely by invoking the contractual description attached to the initial engagement would not advance the constitutional object underlying ***Umadevi (3)*** (supra); rather, it would permit the continuation of the very mischief which the Constitution Bench intended to eradicate.

48] What thus emerges from the aforesaid line of authorities is a consistent and harmonious development of service jurisprudence. ***Umadevi (3)*** (supra) continues to govern the constitutional requirement that appointments to public posts must ordinarily conform to the mandate of Articles 14 and 16 of the Constitution and the applicable statutory recruitment framework. At the same time, the subsequent decisions neither dilute nor depart from the ratio of ***Umadevi (3)*** (supra); rather, they explain the limited exception recognised therein and caution against its mechanical application in situations where the

State itself has continued to utilise the services of duly qualified employees for prolonged periods against recurring institutional requirements. The enquiry, therefore, cannot remain confined to the nomenclature of the engagement but must extend to the substance of the appointment, the manner of entry into service, the nature of duties actually discharged, the continuity of service, and the conduct of the employer over the years.

49] The principles emerging from the aforesaid decisions may, therefore, be summarised thus. **Umadevi (3)** (supra) continues to hold the field and reiterates the constitutional mandate that appointments to public posts must ordinarily conform to the requirements of Articles 14 and 16 of the Constitution and the applicable statutory recruitment rules. Equally, however, the subsequent decisions of the Apex Court have consistently explained that **Umadevi (3)** (supra) was never intended either to legitimise exploitative contractual engagements or to deny consideration in every case where long years of service have been rendered pursuant to a transparent process of engagement. The distinction between an illegal appointment and an irregular appointment remains central to the enquiry. Likewise, while the nomenclature assigned to a post may furnish one relevant circumstance, it cannot be regarded as conclusive. The Court is required to examine the substance of the engagement, the manner of entry into service, the qualifications possessed by the employee, the nature of the duties actually discharged, the continuity of service, the existence of a perennial institutional requirement, and the conduct of the employer over the years. It is in the light of these settled principles that the factual materials placed before this Court are now required to be examined. The cumulative effect of these decisions leaves little room for doubt that the jurisprudence relating to regularisation has evolved substantially after **Umadevi**

(3) (supra) without departing from its constitutional foundation. The enquiry today is not confined to the label attached to the engagement but extends to the legality of the initial process, the nature of the duties discharged, the continuity of service, the existence of a perennial requirement, and the conduct of the employer. These are the parameters on which the present case must be examined.

50] At this stage, it is also apposite to refer to the recent decision of the Division Bench of this Court in **Narayan Prasad Rabha and Ors v. State of Assam and Ors**, in **WA No. 428/2023**. While dealing with appointments made pursuant to a public recruitment process, the Division Bench, after considering **Umadevi (3)** (supra), **M.L. Kesari** (supra), **Jaggo** (supra), **Vinod Kumar** (supra) and the subsequent decisions of the Apex Court, held that where appointments are made pursuant to public advertisement and a process of selection initiated by the State, and the appointees have rendered long and uninterrupted service without any allegation of fraud or misrepresentation, such appointments cannot be characterised as *void ab initio* merely because of procedural lapses attributable to the employer. The Division Bench further held that the State cannot, after extracting prolonged service, take advantage of its own administrative lapses to the prejudice of such employees. The relevant observations are extracted hereinbelow:

“65. In the present cases, the appellants did not enter into service through a concealed or surreptitious route.

66. Their entry resulted from a recruitment process initiated by the State itself. Advertisements were issued in the public domain, applications were invited, selections were held, appointment orders were issued, and the appellants were inducted into service. From that point onwards, the State treated the appellants as members of its workforce, assigned them duties essential to the functioning of public health institutions, and paid

them salaries from the government fund. This conduct of the State continued uninterruptedly for nearly 14 years. In public law, such sustained conduct is not devoid of normative significance. It generates a legitimate expectation that the engagement is lawful and stable, and it simultaneously imposes a corresponding obligation on the State to act fairly, reasonably, consistently and non-arbitrarily.

67. Viewed thus, the appointments of the appellants cannot be characterised as void ab initio. At the highest, they suffer from procedural irregularities attributable solely to the employer. Such irregularity does not erase the reality of long and continuous service rendered, nor does it neutralise the equities that have crystallised over time.

68. Public law does not sanction a course that the State may approve for years and then reprobate when it finds administrative convenience in doing so. The principle that the State cannot take advantage of its own wrong is not a mere equitable slogan. It is a constitutional limitation on arbitrary state action.”

51] The aforesaid judgment of the Division Bench was carried in appeal by the State of Assam before the Apex Court in ***The State of Assam and Ors. v. Narayan Prasad Rabha and Ors***, in ***SLP (C) Diary No. 30413 of 2026***. Upon condoning the delay and hearing the parties, the Apex Court declined to interfere with the judgment and order dated 30.01.2026 passed by the Division Bench of this Court. The judgment has, therefore, attained finality.

52] Having delineated the legal principles governing the field, this Court now proceeds to examine the factual materials placed on record. Since the petitioners belong to two distinct departments, namely, the Department of Computer Science & Information Technology and the Department of Molecular Biology and Biotechnology, and although the legal issues involved are common, certain material facts are peculiar to each department, it would be appropriate to appreciate the evidence department-wise before considering its cumulative effect.

A. Petitioners belonging to the Department of Computer Science & Information Technology [WP(C) Nos. 938/2020 and 9474/2019]

53] The records reveal that by Office Order dated 20.05.2003, the Higher Education Department, Government of Assam, delegated authority to the erstwhile Cotton College to introduce new academic courses. Pursuant thereto, the Government of Assam issued the requisite No Objection Certificates enabling the College to commence, inter alia, the Department of Computer Science & Information Technology. The materials placed before this Court further disclose that with the introduction of the said academic programmes and the consequential increase in teaching workload, the College initiated recruitment of teaching personnel through a process of public advertisement. Accordingly, an advertisement dated 19.02.2008, published in The Assam Tribune, invited applications for engagement as Academic Counsellor (Ad hoc) in the Department of Computer Science & Information Technology. The said advertisement, forming part of the records in WP(C) No. 938/2020, is extracted hereinbelow for ready reference:

“GOVT. OF ASSAM

OFFICE OF THE PRINCIPAL:COTTON COLLEGE

GUWAHATI-1

Website: <http://www.cottoncollege.org>

Applications along with all necessary documents are invited from the interested candidates for the post of Academic Counsellor (Ad hoc) in the department of Computer Science & IT, Cotton College on or before 25th February, 2008.

Eligibility: M.Sc./M.Tech/MCA in Computer Science.

Salary: Rs. 8,000/- + 12 % HRA (consolidated).”

54] Pursuant to the aforesaid advertisement, a process of selection, including interview, was admittedly undertaken. Thereafter, the petitioners in WP(C) Nos. 938/2020 and 9474/2019 came to be appointed as Academic Counsellors in different phases between the years 2007 and 2009. However, petitioner No. 1 Anupam Das was engaged as an Academic Counsellor on 06.08.2007, prior to the advertisement relied on by the petitioners. Their respective appointment letters are available at Page Nos. 31 to 35 of WP(C) No. 9474/2019. The contemporaneous records further disclose that their contractual engagements were periodically renewed and extended by successive orders (Annexure-6, Page Nos. 35 to 39 of WP(C) No. 938/2020), with the result that each of the petitioners continued in service uninterruptedly for a period extending well beyond a decade.

55] One of the principal objections advanced on behalf of the respondent University is that the advertisement pursuant to which the petitioners entered service did not prescribe NET/SLET as an essential qualification, which, according to the respondents, constituted the minimum eligibility requirement for appointment as Assistant Professor under the applicable UGC Regulations. The petitioners, on the other hand, have placed reliance upon Clause 3.3.3 of the UGC Regulations, 2009 (as amended), annexed as Annexure-1 at Page No. 28 of the affidavit-in-reply filed in WP(C) No. 938/2020, to contend that exemption from NET/SLET was permissible in disciplines where such examinations were either not conducted or where sufficient qualified candidates were unavailable. Whether the petitioners ultimately satisfy the statutory requirements governing appointment to the post of Assistant Professor is a matter which shall be examined at the appropriate stage. At present, it is sufficient to observe that it is not in dispute that the petitioners possessed the

qualifications prescribed in the advertisement pursuant to which they were initially engaged (Annexure-4, WP(C) No. 938/2020).

56] The materials on record further reveal that the engagement of the petitioners was neither casual nor confined to a short-lived contractual arrangement. On the contrary, the contemporaneous documents indicate that they continued to discharge teaching responsibilities in the Department over several academic sessions. During the course of their engagement, the issue relating to regularisation also appears to have engaged the attention of both the University authorities and the Government of Assam. The President of the Cotton University Teachers' Association requested the Chancellor of Cotton College State University to consider the regularisation of the services of the petitioners. Thereafter, by communication dated 18.12.2012 (Annexure-8, Page No. 51 of WP(C) No. 938/2020), the Joint Secretary to the Government of Assam addressed the Commissioner & Secretary to the Government of Assam, Higher Education Department, regarding the said issue. This was followed by a series of official communications dated 16.09.2015 (Annexure-10, Page No. 54), 19.08.2016, 24.10.2018, 15.02.2019, and 22.02.2019 (Annexure-11 to Annexure-14, Page Nos. 55 to 60 of WP(C) No. 938/2020), whereby the Government repeatedly sought formal proposals from the authorities of Cotton College/Cotton University concerning the regularisation of the petitioners serving in the Department of Computer Science & Information Technology. Though these communications do not, by themselves, create any enforceable legal right in favour of the petitioners, they unmistakably demonstrate that the issue of regularisation remained under active administrative consideration over a considerable period of time.

57] It further appears that, in response to the aforesaid communications, the respondent University represented that due weightage would be accorded to the experience gained by the contractual teachers while undertaking recruitment to regular teaching posts. Acting upon such representation, the petitioners submitted their applications pursuant to the advertisement dated 19.06.2019 (Annexure-15, Page No. 63 of WP(C) No. 938/2020) issued for recruitment to the regular posts of Assistant Professor. According to the petitioners, notwithstanding their long years of teaching experience and the qualifications possessed by them, no meaningful weightage was ultimately accorded to their experience during the recruitment process. Aggrieved thereby, the petitioners instituted WP(C) No. 9474/2019, questioning the recruitment process and simultaneously seeking regularisation of their services. During the pendency of the said proceedings, the respondent University issued separate orders dated 06.02.2020 (Annexure-21 to Annexure-25, Page Nos. 84 to 88 of WP(C) No. 938/2020), whereby the contractual engagements of the petitioners came to be discontinued, giving rise to WP(C) No. 938/2020, wherein the said termination orders have also been assailed.

58] Another circumstance emerging from the materials on record relates to the availability of qualified candidates in the discipline during the relevant period. It appears that Ms. Sangita Baruah, who was appointed as the only regular Assistant Professor in the Department of Computer Science & Information Technology in the year 2007, admittedly did not possess NET/SLET, M.Phil. or Ph.D. qualification on the date of her appointment and acquired her Ph.D. qualification only in the year 2025. Though the legality or validity of her appointment is not the subject matter of adjudication in the present proceedings, the aforesaid circumstance assumes relevance only to the limited

extent of appreciating the petitioners' contention that sufficient NET/SLET-qualified candidates in the discipline were not available during the relevant period. At the same time, it is equally evident from the records that the petitioners themselves were not appointed against sanctioned cadre posts of Assistant Professor but were initially engaged as Academic Counsellors. The real issue, therefore, is not whether the petitioners bore the designation of Academic Counsellor, but whether, viewed in the light of the contemporaneous records, the substance of their engagement was materially different from the nomenclature assigned to it.

59] A careful scrutiny of the materials available on record further reveals that, throughout the tenure of their engagement, the petitioners were entrusted with responsibilities extending far beyond classroom teaching. The contemporaneous documents relied upon by the petitioners indicate that they were assigned teaching responsibilities in both undergraduate and postgraduate programmes; entrusted with the setting and moderation of question papers; invigilation of examinations; evaluation of answer scripts; preparation and revision of syllabi, including the CBCS curriculum under Gauhati University, Cotton College State University and Cotton University; participation in departmental administration; preparation and presentation of departmental profiles before the NAAC Peer Team during the accreditation exercises held in the years 2010 and 2015; and discharge of several confidential examination-related assignments, including duties as Supervisory Officers in examinations conducted by Gauhati University and Krishna Kanta Handiqui State Open University. The records further disclose that some of the petitioners were also entrusted with election duties as Presiding Officers during General Elections conducted in the State of Assam. Whether the discharge of these responsibilities, by itself, confers any

enforceable legal right upon the petitioners is a matter which shall be considered subsequently. Nevertheless, the nature, extent and continuity of the responsibilities entrusted to them constitute relevant circumstances while examining the true character of their engagement.

60] The materials placed on record further disclose that all the petitioners serving in the Department of Computer Science & Information Technology were members of the Cotton University Teachers' Association (CUTA), an association comprising members of the teaching faculty of the University. Though membership of such an association cannot, by itself, determine the legal status of an employee or confer any right of regularisation, it nevertheless constitutes another contemporaneous circumstance which may legitimately be taken into consideration while appreciating the overall factual matrix and the manner in which the respondent institution itself perceived the role discharged by the petitioners.

61] Significantly, the records further reveal that, having regard to the nature of the duties continuously discharged by the petitioners, the Principal of the erstwhile Cotton College, by orders issued in July, 2012, redesignated their posts from Academic Counsellor to Assistant Professor (Contractual) in the Department of Computer Science & Information Technology and simultaneously revised their remuneration. The contemporaneous records further disclose that the No Objection Certificates issued by the Registrar of Cotton University in the year 2020 in favour of three of the petitioners specifically recorded that they had been serving the institution as Assistant Professors (Contractual) from the dates of their initial appointments. These documents undoubtedly constitute relevant pieces of evidence while examining whether the subsequent

redesignation merely altered the nomenclature assigned to the post or, instead, recognised the true nature of the duties and responsibilities which the petitioners had, in fact, been discharging throughout their engagement.

62] The materials available on record also disclose that the Principal of the erstwhile Cotton College, while forwarding the proposal sought by the Government of Assam, indicated the existence of five vacant posts of Assistant Professor in the Department of Computer Science & Information Technology. It further appears from the Resolution of the Executive Council that the sanctioned strength of the Department comprised one post of Professor, two posts of Associate Professor and nine posts of Assistant Professor, out of which three posts of Assistant Professor came to be filled pursuant to the advertisement dated 19.06.2019. According to the petitioners, six sanctioned posts of Assistant Professor continued to remain vacant, as reflected in the Resolution of the Executive Council as well as the records of the Internal Quality Assurance Cell (Annexure-26, Page No. 89 of WP(C) No. 938/2020). Whether such vacancies in fact existed and, if so, the legal consequences flowing therefrom in the context of the relief sought, are matters which shall be examined at the appropriate stage. At present, it is sufficient to note that these documents form part of the contemporaneous evidentiary materials placed before this Court.

63] The records further reveal that, during the relevant period, the Department of Computer Science & Information Technology catered to a substantial student strength across different academic programmes, namely, BCA (approximately 150 students), MCA (approximately 120 students), B.Sc. Major in Computer Science (approximately 75 students), B.Sc. Pass Course (approximately 60 students), and Higher Secondary Science classes

(approximately 40 students), aggregating to nearly 445 students. The materials placed before this Court further indicate that, till the year 2015, the Department had only one regular faculty member apart from the five petitioners. It was only in the year 2015 that two additional Assistant Professors came to be appointed by Cotton College State University. Consequently, during the intervening period, the petitioners appear to have shouldered a substantial part of the teaching, examination, curriculum development and other academic responsibilities necessary for the uninterrupted functioning of the Department. Though the volume of work discharged by the petitioners cannot, by itself, create a legal right to regularisation, it nevertheless constitutes a relevant circumstance while appreciating the nature of the institutional requirement against which their services continued to be utilised over a prolonged period.

B. Petitioners belonging to the Department of Molecular Biology and Biotechnology [WP(C) Nos. 285/2020 and 5195/2020]

64] Turning now to the petitioners belonging to the Department of Molecular Biology and Biotechnology, the materials placed on record disclose that the erstwhile Department of Biotechnology, presently known as the Department of Molecular Biology and Biotechnology (MBBT), was also established pursuant to the approval granted by the Government of Assam. Consequent upon the introduction of the academic programme and the corresponding increase in teaching requirements, the erstwhile Cotton College issued public advertisements dated 27.06.2008 and 05.06.2010 inviting applications for engagement of teaching personnel. Pursuant to a process of public advertisement and interview held on 12.03.2008 (Annexure-2, Page No. 32 of the affidavit-in-reply filed in WP(C) No. 938/2020), the petitioners came to be

appointed by orders dated 23.07.2008 (Annexure-3, Page No. 30 of WP(C) No. 285/2020) and 28.07.2010 (Annexure-4, Page No. 31 of WP(C) No. 285/2020), respectively.

65] The contemporaneous records further disclose that, although the petitioners were initially appointed on an ad hoc basis under the designation of Academic Counsellor, they continued to be re-engaged from time to time and were thereafter described as Academic Counsellors (Contractual) till January, 2012. With effect from February, 2012, they were redesignated as Associate Faculty (Annexure-5, Page No. 31 of WP(C) No. 5195/2020), and subsequently, with effect from January, 2018, they came to be redesignated as Assistant Professors (Contractual) (Annexure-5, Page Nos. 32 to 36 of WP(C) No. 285/2020). Their contractual engagements continued through successive extensions till December, 2020 (Annexure-10 and Annexure-11, Page Nos. 48 and 49 of WP(C) No. 285/2020). Thus, the continuity of their engagement over a prolonged period is not in dispute, although the legal consequences flowing therefrom remain the principal issue between the parties.

66] The records further reveal that the Executive Council of Cotton University, by Resolution No. 2018/5/(vi) dated 22.11.2018 (Annexure-7, Page No. 38 of WP(C) No. 285/2020), took note of the staffing position in the Department of Molecular Biology and Biotechnology. According to the petitioners, six vacancies of Assistant Professor existed in the Department as on the relevant date. Notwithstanding the continuance of the petitioners in service for a considerable period, the respondent University issued the advertisement dated 19.06.2019 (Annexure-8, Page Nos. 38 to 44 of WP(C) No. 5195/2020), inviting applications for three regular posts of Assistant Professor, of which only one post was

earmarked for the unreserved category. Relying upon the Resolution of the Executive Council, the petitioners participated in the recruitment process on the understanding that due weightage would be accorded to their long years of teaching experience.

67] It appears from the materials on record that both the petitioners possessed the educational qualifications prescribed under the UGC Regulations, 2018 (Annexure-10, Page No. 47 of WP(C) No. 5195/2020), and accordingly submitted their candidature pursuant to the advertisement dated 19.06.2019. They were, however, not shortlisted for the viva voce. According to the petitioners, they subsequently learnt that one of the reasons for their non-consideration was the question of upper age limit. It is their specific case that such age restriction is applicable only to appointments in Government or provincialised colleges and not to appointments in Universities governed by the UGC Regulations. The petitioners accordingly submitted representations dated 06.03.2020 (Annexure-11, Page Nos. 60 to 61 of WP(C) No. 5195/2020), requesting relaxation of the upper age limit, which, according to them, remained unconsidered. Aggrieved thereby, they instituted WP(C) No. 5195/2020, questioning the shortlist dated 26.11.2020 (Annexure-9, Page Nos. 45 to 46 of WP(C) No. 5195/2020) and seeking, inter alia, consideration of their candidature as well as regularisation of their services. It is further their case that the lone unreserved post for which they had applied continues to remain vacant.

68] The materials placed before this Court further indicate that, throughout their engagement, the petitioners belonging to the Department of Molecular Biology and Biotechnology were entrusted with responsibilities ordinarily

discharged by members of the regular teaching faculty. Apart from taking theory and practical classes, they were entrusted with confidential examination work, including the setting of question papers, invigilation duties, evaluation of answer scripts, and discharge of duties as External Examiners in provincialised colleges under Gauhati University, Cotton College State University and Cotton University between the years 2009 and 2019. The records further indicate that one of the petitioners discharged election duties as Presiding Officer during the Panchayat Elections held in the State of Assam in the year 2011; coordinated the preparation and presentation of the Departmental Profile before the NAAC Peer Team during the accreditation exercises held in the years 2010 and 2015; participated in the design and preparation of CBCS syllabi under Cotton College State University and Cotton University during the years 2013 and 2018; secured external research funding from the UGC and the Department of Science and Technology, Government of Assam; successfully completed research projects; was recognised as a Ph.D. Supervisor under Cotton College State University with effect from November, 2016; served as a member of the Departmental Research Committee with the approval of the Vice-Chancellor; and supervised advanced laboratory visits both within and outside the State of Assam. These contemporaneous documents have been relied upon by the petitioners to demonstrate the nature, extent and continuity of the academic responsibilities entrusted to them.

69] The materials on record further disclose that the remuneration of the petitioners was revised from time to time corresponding with the responsibilities assigned to them. It further appears that, notwithstanding their long and uninterrupted engagement extending over more than twelve years, the respondent authorities continued to retain them on contractual arrangements.

According to the petitioners, although they discharged academic responsibilities substantially similar to those performed by regular Assistant Professors, they continued to receive considerably lesser remuneration. While these circumstances do not, by themselves, conclude the legal controversy involved, they nevertheless constitute relevant factors while determining the true nature of the engagement and evaluating the conduct of the employer over the years.

70] A cumulative consideration of the materials placed on record relating to both Departments discloses certain significant common features. First, the petitioners entered service pursuant to public advertisements followed by a process of selection and interview. Secondly, each of them admittedly possessed the qualifications prescribed in the respective advertisements under which they were initially engaged. Thirdly, their engagements were not confined to isolated or sporadic assignments but were successively extended over prolonged periods. Fourthly, throughout the tenure of their engagement, they discharged teaching and academic responsibilities which, according to the contemporaneous records, substantially overlapped with those ordinarily discharged by regular Assistant Professors. Finally, in both Departments, the respondent authorities themselves successively redesignated the petitioners from Academic Counsellors to Associate Faculty and ultimately to Assistant Professors (Contractual). Whether these circumstances satisfy the legal requirements for regularisation now falls for consideration.

71] At this stage, this Court considers it necessary to examine the substance of the engagement rather than the nomenclature assigned to it. Constitutional adjudication does not ordinarily proceed upon the labels employed by the employer but upon the true nature of the relationship emerging from the

contemporaneous records. The materials placed before this Court disclose that, notwithstanding their initial designation as Academic Counsellors, the petitioners continuously discharged teaching and academic functions in their respective Departments over prolonged periods, worked within the same academic hierarchy, catered to continuing institutional requirements, and were ultimately redesignated as Assistant Professors (Contractual). The records further indicate that the redesignation was not accompanied by any fundamental alteration in the nature of their duties or responsibilities but merely recognised the very functions which they had all along been discharging.

72] Having considered the contemporaneous records in their entirety, this Court is of the considered view that the subsequent redesignation of the petitioners as Assistant Professors (Contractual) cannot be examined in isolation from the history of their engagement. The redesignation was neither preceded by a fresh process of recruitment nor accompanied by the entrustment of any substantially different duties or responsibilities. On the contrary, the materials placed before this Court unmistakably indicate continuity in the nature of the work performed, continuity in the institutional requirement sought to be fulfilled, and continuity in the services rendered by the petitioners. The redesignation, therefore, merely recognised and formalised the true character of the services which the petitioners had, in substance, been rendering from the inception of their engagement.

73] The objection advanced on behalf of the respondent University regarding the absence of NET/SLET qualification also requires consideration. It is not in dispute that the petitioners possessed the qualifications prescribed under the advertisements pursuant to which they initially entered service and were

selected through a transparent process. The controversy raised by the respondents pertains to the educational qualifications and statutory requirements applicable to regular appointment as Assistant Professor under the relevant UGC Regulations. Whether each petitioner presently satisfies such educational qualifications and other statutory requirements is a matter which necessarily falls for consideration by the competent authority while undertaking the exercise of regularisation. Consequently, the objection relating to NET/SLET cannot, by itself, render the petitioners' appointments illegal so as to deny them consideration for regularisation at the threshold.

74] Equally significant is the nature of the duties continuously discharged by the petitioners. The contemporaneous records unmistakably establish that they were entrusted not merely with classroom teaching but with the entire spectrum of academic responsibilities ordinarily discharged by regular faculty members, including curriculum development, setting and moderation of question papers, evaluation of answer scripts, conduct of examinations, departmental administration, accreditation exercises, research supervision and other institutional responsibilities. These materials lend considerable support to the conclusion that, notwithstanding the nomenclature initially assigned to their posts, the petitioners were, in substance, discharging the functions of Assistant Professors to meet the regular and perennial academic requirements of the institution. Though discharge of such duties does not by itself confer a legal right to regularisation, it constitutes an important circumstance in determining the true nature of their engagement.

75] The contemporaneous records further indicate that sanctioned teaching posts existed in the respective Departments and that the respondent institution

itself recognised the continuing requirement of qualified teaching personnel. The resolutions of the Executive Council, the proposals forwarded by the University to the Government and the other materials placed on record sufficiently demonstrate that vacancies in the cadre of Assistant Professor existed during the relevant period. Whether the exact number of such vacancies was five or six is not of determinative significance. What is material is that the petitioners were retained over several years to discharge the functions attached to sanctioned academic posts and not to meet any casual or temporary exigency. This circumstance reinforces the conclusion that their appointments, if irregular in certain procedural respects, cannot be characterised as illegal or as backdoor entries.

76] The petitioners entered service pursuant to a transparent process of selection through public advertisement and interview. They possessed the qualifications prescribed under the advertisements pursuant to which they were initially engaged, and their appointments were made to meet the teaching requirements arising out of newly introduced academic programmes. Although they were initially designated as Academic Counsellors, the contemporaneous records unmistakably establish that from the inception of their engagement they continuously discharged duties and responsibilities substantially identical to those ordinarily performed by Assistant Professors. The subsequent redesignation of the petitioners as Assistant Professors (Contractual) was not preceded by any fresh recruitment process nor accompanied by any material alteration in the nature of the duties entrusted to them. Rather, it merely recognised and formalised the factual position which had existed throughout their engagement. The existence of sanctioned teaching posts, the continuing institutional requirement, the transparent mode of selection and the absence of

any allegation of fraud, misrepresentation or backdoor entry collectively demonstrate that the petitioners' appointments, even if procedurally irregular, cannot be characterised as illegal within the meaning explained in **Umadevi (3)** (supra) and the subsequent decisions of the Supreme Court. Consequently, Issue Nos. (i) and (ii) are answered in favour of the petitioners.

77] Having continuously availed the services of the petitioners for well over a decade to meet recurring academic requirements, it would be manifestly inequitable to permit the respondent authorities to dispense with their services solely on the basis of the contractual label attached to their initial engagement. The materials on record further demonstrate that the issue of regularisation remained under active consideration at different administrative levels and that the respondent authorities themselves repeatedly acknowledged the continuing necessity of the petitioners' services. It is nobody's case that the petitioners secured their appointments by fraud, misrepresentation, concealment of material facts or any other unfair means. Any procedural irregularity, if at all, is attributable to the employer and not to the petitioners.

78] The respondent University has also contended that some of the petitioners, having voluntarily participated in the recruitment process initiated pursuant to the advertisement dated 19.06.2019, are estopped from questioning the recruitment process or from seeking regularisation. This submission cannot be accepted. The challenge raised in the present proceedings is not confined to the recruitment process undertaken in the year 2019 but is founded upon an independent claim arising from the petitioners' long and uninterrupted engagement in the service of the respondent institution and their entitlement to consideration for regularisation in accordance with law. Participation in the

recruitment process, undertaken in an attempt to secure continuation of service, cannot amount to a waiver of that independent claim, nor can it operate as an estoppel against asserting a legal right otherwise available. The principle that a candidate who participates in a selection process cannot subsequently challenge the same has no application where the relief sought is founded upon a distinct and independent cause of action.

79] Learned Senior Counsel appearing for the respondent University as well as the learned Standing Counsel appearing for the Higher Education Department have relied upon several decisions including **R.N. Nanjundappa** (supra), **B.N. Nagarajan** (supra), **Sukanti Mohapatra** (supra), **K.C. Joshi** (supra), **Dr. M.A. Haque** (supra), **Dr. Arundhati A. Pargaonkar** (supra), **A. Singamuthu** (supra), **Mohd. Mustafa** (supra), **Ganesh Digambar Jambhrunkar** (supra), **Ilmo Devi** (supra), **Vibhuti Shankar Pandey** (supra), **R.J. Pathan** (supra), **Mahendra Singh** (supra), **Official Liquidator v. Dayanand** (supra), **Trimurthi Fragrances** (supra), **Tajvir Singh Sodhi** (supra) and **Dr. Kishore Kumar Deka** (supra). There can be no quarrel with the principles enunciated therein. Those decisions reiterate that appointments made dehors the constitutional scheme or in violation of the applicable statutory recruitment rules cannot ordinarily be regularised and that regularisation cannot become an alternative mode of recruitment.

80] The difficulty, however, lies in applying those decisions mechanically to the facts of the present case. Unlike the cases relied upon by the respondents, the petitioners before this Court entered service pursuant to public advertisements, participated in a transparent process of selection, possessed the prescribed qualifications for their initial engagement, continuously discharged perennial

teaching functions for prolonged periods and were successively redesignated by the respondent authorities themselves without any fresh recruitment. The controversy here is therefore not whether illegal or backdoor appointments deserve regularisation. The real issue is whether appointments which are, at the highest, irregular, made pursuant to a transparent selection process to meet sanctioned and continuing institutional requirements, fall within the principles recognised in **Umadevi (3)** (supra) and subsequently explained in **M.L. Kesari** (supra), **Shripal** (supra), **Vinod Kumar** (supra), **Dharam Singh** (supra) and **Narayan Prasad Rabha** (supra). In the considered opinion of this Court, they do.

81] In view of the foregoing discussion, this Court is satisfied that the petitioners have established a case warranting equitable relief in terms of the principles emerging from **Umadevi (3)** (supra), **M.L. Kesari** (supra), **Shripal** (supra), **Vinod Kumar** (supra), **Dharam Singh** (supra) and **Narayan Prasad Rabha** (supra). Having regard to the peculiar facts of the present case, the petitioners are entitled to consideration for regularisation as Assistant Professors in their respective Departments, subject to their satisfying the requisite educational qualifications and other statutory requirements applicable to the posts. Issue No. (iii) is accordingly answered in favour of the petitioners.

82] Consequently, the respondent authorities are directed to undertake the exercise of considering the cases of the petitioners for regularisation as Assistant Professors in their respective Departments, in accordance with law and in the light of the observations made hereinabove. While undertaking such exercise, the respondents shall examine the eligibility of each petitioner with reference to the educational qualifications and other statutory requirements

applicable to the post of Assistant Professor and shall pass a reasoned decision in respect of each petitioner.

83] Until the aforesaid exercise is completed and a final decision is taken by the competent authority, the impugned orders terminating the services of the petitioners, if any, shall remain in abeyance. Any decision regarding continuation or otherwise of the petitioners' services shall abide by and be governed by the outcome of the exercise directed herein.

84] The entire exercise shall be completed by the respondent authorities within a period of two months from the date of receipt of a certified copy of this judgment.

85] The writ petitions stand allowed in the above terms. No order as to costs.

JUDGE

Comparing Assistant