

Facts

“The migrants sat all day long on a rocky mound and discussed the affairs of their community. Days were spent sitting and talking about whatever came to their minds; their plight and their sordid condition. Waiting kept them busy. For many it was a lacerating wait. They had not yet realised that this waiting was not to end. They did not know what they were waiting for. This waiting was not for returning to their homes, not for peace in the Valley, but for a new day to dawn and the new evening to descend.”
(Excerpt from “The Garden of Solitude” by Siddhartha Gigoo (2011, Rupa Publications)

1. “Homeland is something one becomes aware of only through its loss” said Gunther Grass. It is the loss of homeland of the writ petitioners, a batch of whom are in appeal, which led them to Delhi, during 1990-93 and their consequent employment as teachers by the Govt of NCT for over two decades on contractual basis, without prescribed salaries or any terminal benefits, that constrained them to approach this court. The appellants (hereafter called “the appellant-teachers” or “teachers” variously), in one appeal (LPA 286/2015) and Government of NCT of Delhi (hereafter “NCT” appellant in LPA 620/2015) have preferred these appeals. The NCT’s appeal questions the decision of a learned single judge allowing W.P. (C) No. 3989/2010 and directing it to give the benefits and extend terms and conditions given to regular teachers, falling in the same category to the writ petitioner/respondents, as also to create the necessary posts and regularize them. The first respondent in that appeal, is a society registered under the Societies Registration Act formed for the welfare of the migrant teachers from Kashmir and who are working in different parts of Delhi and surrounding areas; the other respondents (198) are the internally displaced persons from the valley of Kashmir and had sought refuge in the NCT of Delhi, who were contractually employed as teachers by NCT. The second appeal is by similarly situated teachers, who were denied that relief in the judgment of another decision, of another learned single judge (in W.P. (C) 2574/2010). The facts are common; however all the relevant documents, government orders, circulars etc are found in the NCT’s appeal and are adverted to for same of

convenience, since at the time of hearing, parties had addressed their contentions based on those documents and pleadings.

Necessary facts

2. The facts are that in and around the year 1986, the law and order situation in the Kashmir Valley had significantly deteriorated and large-scale communal violence was prevalent. Fearing risk to their lives, there was a mass exodus of many Kashmiris, who migrated to Jammu, Delhi and other places nearby. These people who had left their homes, jobs and properties had to be settled in camps by the Delhi Government. Those who were educated among these migrants, looked to be gainfully employed in order to be able to restart their lives and earn their livelihood.

3. In order to provide employment to the educated amongst the migrants, NCT at a Cabinet meeting dated 02.04.1994- after noticing that some of the migrants were trained teachers and that their services could be utilized in that capacity, resolved that one educated member from each such migrant family could be appointed as teacher depending on her or his *suitability for the different categories of jobs*. It was also noted that since the number of such trained Kashmiri migrant teachers was comparatively small, there would be no difficulty in offering them employment on year to year contractual basis. The decision in relevant part is extracted below:

"Employment of Kashmir Migrants in the Education Deptt.

It was pointed out that some of the migrants were trained teachers and their services should be utilised on contractual basis. It was further mentioned that the number of such trained teachers among the Kashmir Migrants was comparatively small and there should be no difficulty in offering them employment on contract on a year to year basis. It was decided after brief discussion that one member from each migrant family may be appointed as teacher depending upon his/her suitability for different categories of jobs. Such persons may be employed in the schools run by the Directorate of Education, MCD and NDMC. This benefit will be available only to the migrants presently living in camps run by the Government."

4. As a consequence of the Cabinet decision, based on advertisements issued, several individuals responded. They were interviewed and selected; appointment letters were issued to the Kashmiri migrants who had applied for such posts on contractual basis.

Appointments were made both for Trained Graduate Teachers (TGTs) and Post Graduate Teachers (PGT). In terms of the appointment letters issued, the migrant teachers were appointed initially for a maximum period of six months or till the post was filled on a regular basis. The appointment was terminable by issuing one month's notice or in the alternative one-month's salary in lieu thereof; termination of appointment could be without assigning any reasons. The terms of the appointment required the teachers so appointed to take the full teaching load prescribed by the curriculum. They were however not entitled to claim any benefit of provident fund, pension, gratuity, medical attendance and treatment, accommodation or HRA, or any other benefits available to government servants appointed on regular basis. The teachers so appointed would be on whole time appointment of the school and could not accept any other appointment- paid or otherwise- during the subsistence of their contract(s). The terms also stipulated that the appointee had no right or claim for regular appointment to the post. The teachers so appointed would be entitled to only casual leave of 12 days a year, but no other leave or vacation with pay. The teachers were appointed at a salary of ₹ 2500 per month for TGT and ₹3000 per month PGT.

5. While considering the applications, the Directorate of Education provided a 5% relaxation, in the marks obtained in graduation, to those applicants who possessed a Post Graduate Degree in the teaching subject for which he/she had applied. As far as the age limit was concerned, a relaxation of 5 years was given. Additionally, the eligibility conditions stipulated, which were non-negotiable, were as follows:

- (i) At least a Second Class Degree involving (sic) more than 45% of marks.
- (ii) Compulsory holding of B.Ed. Degree.
- (iii) Registration as a Kashmiri migrant in Deputy Commissioner's Office.

6. It is a matter of record that thereafter from time to time, the term of contractual employment of such Kashmiri migrants was increased by way of executive orders. By order dated 31.03.1995, the period of contractual employment was extended up to 14.05.1995 till the schools closed for vacations and after the summer vacations, the contractual employment would begin again from 15.07.1995. Again when the period of the contract was expiring on 31.12.1995, it was extended up to 31.03.1996 by order-dated

29.12.1995. It was again extended from 01.05.1995 to 30.06.1996. From 01.07.1996 it was extended to 31.03.1997, and so on, on a year-to-year basis. By order of 19.05.2006, the period of contractual employment was extended to three years, from 01.04.2006 to 31.03.2009. At that time, the salary payable to these teachers was ₹8000 for TGT and ₹9500 for PGT. Again with effect from 01.04.2009, their contractual appointment was extended up to 31.03.2012.

7. By order dated 11.07.2011, the existing remuneration was increased from ₹11,140 TGT and ₹13,160 PGT to ₹20,989 TGT and ₹21,291 PGT, which included dearness allowance for the first time in their salary. As per this order, the increase in dearness allowance would be given once a year based on increase in price index. The term of appointment of the migrant teachers would be extended for a period of five years from 01.04.2012, or till a teacher attained the age of 60 years. In all of these orders issued from time to time, it was expressly mentioned that the appointment of the Kashmiri migrants was only on compassionate grounds and keeping in view the situation in Kashmir. Furthermore, each order specified that these migrant teachers were not entitled to claim regularization or parity in terms of pay, leave and other benefits which were available to those appointed on regular basis.

8. It is a matter of record (now disclosed during the letter patent appeal proceedings) that on 11.06.2012, the Lt. Governor of the NCT of Delhi by order granted a one-time relaxation in the upper age limit for the Kashmiri migrants, for appearing in the examinations conducted by the Delhi Subordinate Services Selection Board from time to time, for recruitment of the respective category of teachers, to facilitate the appointment of these migrant teachers on regular basis. On 01.04.2017, the Directorate of Education issued an order extending the appointment of the migrant teachers for a period of five years or till the teacher attains the age of 60 years. Most recently by order, dated 05.04.2018, the Government of NCT of Delhi revised the remuneration of the Kashmiri migrant teachers from ₹20,989 TGT to ₹45,798/- and ₹21,291 to ₹48,552/- for PGTs.

9. From around 1998 onwards, the migrant teachers made representations to the NCT at different times, in order to regularize their services and bridge the inequality in pay-scale and other benefits between them and those employed by the Government on

regular basis. The learned single judge (in W.P. (C) No. 3989/2010- hereafter referred to as the “regularization judgment”) order extracts a series of communications that took place between officials of the Central Government and the Government of NCT of Delhi, over a period of time, on the issue of the plight of the Kashmiri migrant teachers, employed on contractual basis and whose remuneration and benefits were considerably much lower than teachers employed by the NCT on regular basis.

The impugned judgments

10. In the judgment of a learned single judge, in WP(C) No.2574/2010- which had been preferred the same time as W.P. (C) No. 3989/2010 (which led to the regularization judgment) the relief of regularization and equal pay scales was denied. The learned single judge held that on existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality (except possibly for equal pay for equal work) with regular employees who form a separate class. It was held that such employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21 of the Constitution and that equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization. WP(C) No.2574/2010 was accordingly dismissed. The aggrieved teachers have appealed this decision.

11. The regularization judgment dated 18.05.2015 allowed W.P. (C) No. 3989/2010 (after noticing and distinguishing the earlier judgment of the other learned single judge, rejecting the claim for regularization) and issued the following directions to the Government of NCT of Delhi:

(i) The petitioners who were employed in schools under Department of Education (DOE), Municipal Corporation of Delhi and New Delhi Municipal Council would be

given emoluments and benefits which were paid and extended to regular employees falling in the same category, i.e., TGT and PGT.

(ii) The petitioners employed would be regularized and for this purpose, creation of necessary posts was directed within three months from the date of the order.

(iii) Among the petitioners who had been disengaged from employment, or had expired during the pendency of the writ petition, the NCT was directed to treat them as regular employees and grant them suitable benefits as would be available to permanent/regular employees. The NCT has appealed the decision in the regularization judgment. Against the impugned decision, the Government of NCT of Delhi has preferred the present appeal.

Contentions of parties

12. The NCT contends that the impugned regularization decision of the learned Single Judge is erroneous as the Kashmiri migrant teachers could neither have claimed, nor have been granted the benefit of regularization. It is argued that the migrant teachers were appointed on a contractual basis, as a special case, owing to the prevalent situation in Kashmir and the necessity to provide the families who had migrated to the NCT of Delhi with some kind of employment in order to enable them to earn their livelihood. At the time of their initial appointment, it was made clear to them such appointment was purely on compassionate grounds and on contractual basis, and that it would not confer on the teachers the right to claim regularization. The terms of the appointment as specified in their appointment letters also unambiguously stated so. Subsequently, all orders extending their tenure of appointment from time to time have also specified that their appointment is on contractual terms and they could not claim benefits as were granted to the other teachers appointed by the Government on regular basis.

13. Mr. Siddharth Luthra, learned senior counsel appearing on behalf of the NCT urges that the principle of equal pay for equal work is inapplicable to the facts of the present case as the migrant teachers were contractually appointed without following any recruitment procedure. It was contended that where the contractual employees were not selected or appointed in the same manner as regular employees, inasmuch that a regular employee had to compete in a process of open selection, the principle of equal pay for

equal work would be inapplicable. In this regard, reliance is placed on the decisions of the Supreme Court in *State of Haryana v. Jasmer Singh*, (1996) 11 SCC 77 and *State of Haryana v. Charanjit Singh*, (2006) 9 SCC 321.

14. In this regard, Mr. Luthra drew the attention of the Court to the decision of the cabinet dated 02.04.1994, whereby the issue of employment of the Kashmiri migrants in the education department was considered. That decision, noted that the number of trained teachers among the Kashmiri migrants was comparatively small and there would not be any difficulty in offering them employment on contract on a year to year basis. It was therefore decided that one member from each migrant family would be appointed as teacher depending on his/her suitability for the different categories of jobs. Therefore, Mr. Luthra argued that not only was it clear from the very beginning that the migrant teachers were to be appointed on contractual basis, it was also evident that these teachers did not go through any selection process as such, and therefore could not claim parity with the teachers appointed on a regular basis who had gone through the requisite selection process. In fact, granting the migrant teachers parity with the teachers appointed on regular basis would be unfair to the latter, since they were appointed through a proper selection process.

15. On behalf of the NCT, significant reliance is placed on the decision of the Supreme Court in *Secretary, State of Karnataka v. Umadevi*, (2006) 4 SCC 1 to contend that the migrant teachers could not be regularized since they were appointed on a contractual basis and not through the regular recruitment process. In this regard, Mr. Luthra emphasized that the Kashmiri migrant teachers were appointed through the cabinet decision dated 02.04.1994 and not by virtue of the regular recruitment notification that was issued on 19.06.1994. This position was clarified by the appellants by their letter dated 10.07.2014 addressed to the Department of J&K Affairs of the Ministry of Home Affairs, wherein the appellants specified that the advertisement dated 19.06.1994 was meant for the post of regular teachers only and not the Kashmiri migrant teachers who were already appointed on contractual basis by the cabinet decision dated 02.04.1994. Insofar as the Kashmiri migrant teachers was concerned, their appointment was on the basis of three criteria alone, i.e. at least a second class degree with more than 45% marks,

registration as Kashmiri migrant in Deputy Commissioner/SDM office in Delhi, and further, an age relaxation of five years beyond the permissible age limit was also stipulated for the appointment of these migrant teachers. On this basis therefore, it is argued that since the appointment criteria and procedure for the Kashmiri migrant teachers was different from that of the teachers appointed on regular basis pursuant to the advertisement dated 19.06.1994, in view of the decision in *Umadevi (supra)*, these migrant teachers could not be regularized. While admittedly, at the relevant point of time, there used to be no written examinations for the like for making appointments to these posts of teachers, which started only after 1998 when the DSSSB was constituted, yet it was evident that the manner of appointment of the migrant teachers was different from that of the teachers appointed on regular basis, even in 1994. It is argued that the subsequent decisions of the Supreme Court in *Nihal Singh v. State of Punjab*, (2013) 14 SCC 65 and *Amarkant Rai v. State of Bihar*, (2015) 8 SCC 265, which the learned single judge had relied on in the impugned judgment to distinguish the decision in *Umadevi (supra)*, were both inapplicable to the facts of the present case as they both covered separate exceptional situations, which did not have the effect of diluting the rule laid down in *Umadevi (supra)*, which was squarely applicable to the facts of the present case.

16. It is also argued by Mr. Luthra that the earlier judgment dated 05.04.2013 which denied regularization held that since the migrant teachers were contractual employees who were not appointed through the regular recruitment process, in view of the law laid down in *Umadevi (supra)*, they could not claim regularization. Since this decision was rendered by a learned single judge, and was prior to the impugned decision, it was not open to the learned single judge in the present case to distinguish the previous view of coordinate Bench and take a contrary view without referring the question to a larger bench and on that ground too, the impugned order had to be set aside. Reliance is placed in this regard on the decision of the Supreme Court in *Central Board of Dawoodi Bohra Community v. State of Maharashtra*, (2005) 2 SCC 673:

"Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) *The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*

(2) *A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.*

(3) *The above rules are subject to two exceptions :*

(i) *The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and*

(ii) *In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing."*

17. The learned senior counsel argued that the NCT's appeal should be allowed and the appeal of the teachers, dismissed, because the government's decision was a conscious one, carefully taken after weighing in all options and taking into account all considerations. It was pointed out that at one stage of the proceeding, the court had recorded an assurance on behalf of the NCT that the teachers' services would be regularized. However, that assurance was contrary to the record, since no executive decision had been taken; moreover, no appropriate authorization to hold out such assurance was given. Furthermore, it was submitted that the posts in question are permanent and encadred positions. Though regular recruitment was not resorted to in a timely manner, there are no less than three instances when that was done. The Kashmiri

migrant teachers were given a one-time age relaxation- in 2011 to enable them to compete in the regular recruitment process, an opportunity that they did not avail of. The regular teachers were appointed to posts after due selection process and interview in accordance with the prevailing rules. However, that was not so in the case of the writ petitioner/ teachers; the department before their contractual engagement did scrutinize the candidature of those who responded to advertisement.

18. Mr. Luthra highlighted that the writ petitioner teachers consciously accepted contractual positions, the terms of which expressly put them on notice about the tenuous nature of their employment (i.e. that the employment could be terminated by one months' notice) and further, that such employment did not entitle them to claim regularization. Therefore, for them to seek such relief now, is impermissible. It was argued that the doctrine of equal pay for equal work presupposes fulfillment of several conditions, such as that the employee must hold the prescribed qualification, under the rules, for the post concerned; she or he should have applied through the regular channel for employment (i.e. the application should have been in response to an employment exchange notice, or public advertisement ensuring fair and wide participants amongst all qualified candidates); the post advertised should have been part of the regular or permanent cadre; the process of selection (i.e. test or interview) should have been in accordance with the rules prescribed for the purpose; and the appointment should have been to a regular vacancy in the cadre. In the present case, the contractual appointment of the Kashmiri migrant teachers fulfilled none of those requirements; consequently, their claim for equal pay and regularization should not have been entertained or even adjudicated.

19. Finally, it is argued that the NCT was alive to the needs of the Kashmiri migrant teachers, and apart from extending their contractual term periodically, the salaries payable to the migrant teachers have also been reviewed and increased from time to time, and as per the latest revision these teachers are paid ₹45,798 for TGT and ₹48,552 for PGT. It is argued that the Government has considered the issue back and forth and has examined in detail the recommendation for regularization. In fact, the appellant has granted the Kashmiri migrant teachers a one-time age relaxation in the upper age limit for the number of years that they have served in the Directorate of Education, for appearing in the

examinations conducted by the DSSSB, by order dated 11.06.2012. By giving them the option to appear for these examinations, the Government of NCT of Delhi has actually facilitated their regularization through proper channels. It is lastly argued that in these matters concerning appointment of individuals to particular posts, the Government should be given sufficient latitude and a fair margin of appreciation, and it was not the function of the courts to substitute their wisdom for that of the persons to whose judgment the matter in question is entrusted by law, which in this case, is the Government of NCT itself. Reliance is placed on the decision of the Supreme Court in *Ranvijay Singh v. State of Uttar Pradesh*, 2017 SCCOnline SC 1448, to advance this proposition.

20. On behalf of the respondents - the Kashmiri migrant teachers, it was argued that the impugned decision of the learned single judge (in the regularization judgment) did not suffer from any error of law. The background in which the Kashmiri migrants were appointed as teachers was highlighted in the teachers' arguments. It was stated that due to prolonged violence in the Kashmir valley, those individuals had to leave their properties and belongings and flee to Delhi, where the Government housed them in makeshift camps. At that time, most of these migrant families were unemployed and lacked the means to support their own livelihood. In this background, when the Government of NCT of Delhi offered those of the migrants with the required qualifications contractual employment as school teachers, this was readily accepted by the migrants as a means to earn their livelihood at a time when they did not have any other alternative or option to support themselves or their families. Their helplessness and the consequent lack of bargaining power, along with the hope that soon they may be in a position to go back to their homeland, were the reasons that they accepted the contractual terms specified by the Government. However, since then, they have continued to remain so employed for the last 24 years, and since the situation in the valley has not improved sufficiently for them return to their homeland, after a brief period of displacement, their initial acceptance of the contractual terms cannot preclude the exercise of their rights to claim regularization, and it cannot mean that they should accept the patently unequal and discriminatory conditions that are imposed upon them even today. The peculiar circumstances that the respondents were faced with and the inequality of bargaining power meant that the

conditions that are continually imposed upon them by the Government are manifestly unconscionable.

21. The teachers argue that the duties and responsibilities as teachers assigned to them, were in all respects the same as those of the teachers appointed on regular service. In fact, even apart from teaching, the services of these migrant teachers have been utilized in other works. They have been allocated Election Commission work or have served as examiners for CBSE examinations as well, much like teachers appointed on regular basis. However, despite performing equal work for so many years as that of regular teachers, their pay and other benefits remain unequal. Moreover, often many of such Kashmiri migrant teachers have in the past, received accolades and other recognition for the quality of the service they have rendered as teachers in schools for a sustained period of time, and yet, they have neither been regularized nor given pay equivalent to that of regular teachers, on the sole ground that their initial appointment was on contractual terms and made on compassionate grounds, and thereafter every order extending their term has made clear that these migrant teachers were only continued in service on contractual basis.

22. The teachers during the course of hearing produced a tabular chart which highlighted the difference in pay and benefits between the migrant teachers and those appointed on regular scale. This chart does not include the recent April 2018 notification issued by the Department of Education, Government of NCT of Delhi. Relying on this chart, the differential in pay and benefits is stressed upon by counsel for the respondents. The pay received by the Kashmiri migrant teachers for PGT category is ₹32712 and for TGT category is ₹32248, whereas for regular PGT it is more than ₹100000 and for regular TGT it is between ₹85000 to ₹90000. In comparison, both the regular teachers as well as the Kashmiri migrants do all types of work, teaching and administrative responsibilities included. Further, it is highlighted that the Kashmiri migrants have to work during the holidays as well if they are to earn pay for that period. In contrast, the regular teachers do not have to work during the holidays and earn pay for that period, and if they are called to work during the holidays, they get paid leave credits.

23. Further, it is emphasized that the teachers appointed on the regular scales are entitled to a number of benefits such as Leave Travel Allowance, maternity leave, casual leave, earned leave, child care leave, bonus, promotion benefits, hike in pay to pay commission recommendations, HRA, PF, gratuity, ESI, medical allowance, pension as well as extension of period of service by two years after retirement. In contrast, the migrant teachers are entitled to only 8 days leave in a year and are granted no other leaves or benefits of carry forward. They are not entitled to promotions, PF, ESI, maternity benefits, gratuity, pension, benefit of extension of service after retirement, or pay hike according to recommendations of the pay commission. In fact, it is highlighted from the chart, that even guest teachers and assistant teachers appointed by the Government are entitled to a higher salary and more benefits than the migrant teachers, even though the latter has a much higher workload, equivalent to that of teachers appointed on permanent basis.

24. Reliance is placed on the recent decision of the Supreme Court in *State of Punjab v. Jagjit Singh*, (2017) 1 SCC 148 to argue that principle of equal pay for equal work was applicable to temporary employees in a claim of pay parity with regular employees. It is contended that the Government of NCT of Delhi could not rely on the decision of the Supreme Court in *Umadevi (supra)* to deny parity to the migrant teachers. The decision in *Umadevi (supra)* was further interpreted in *Nihal Singh (supra)* and *Amarkant Rai (supra)*, and in both decisions the Supreme Court noted that the decision in *Umadevi (supra)* cannot become a license for exploitation by the State and its instrumentalities. Reliance is also placed on the decision of the Supreme Court in *Dharwad District P.W.D. Literate Daily Wage Employees Association v. State of Karnataka*, AIR 1990 SC 883, to contend that since the employees on daily wages had been working for a period of more than 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages. It is also argued that at different points of time, different departments of both the central and the state government have sympathized with the cause of the migrant teachers and have either expressly or impliedly conceded to the need to regularize these teachers. Yet somehow, on some or the other pretext, the

Government of NCT of Delhi has not taken the requisite action to regularize these teachers, and they continued to remain employed on contractual basis.

25. The teachers lay emphasis on Article 39(d) of the Constitution which proclaims the principle of "equal pay for equal work" as a Directive Principle of State Policy. Reliance is placed on the following dictum of the Supreme Court in *Randhir Singh v. Union of India*, (1982) 1 SCC 618:

"It is true that the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation. Article 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean something to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay."

26. It was argued that the teachers, who fled the valley, fearing for their lives, with little or no belongings, had no choice. Yet, it cannot be denied that they were eligible to hold the posts. The state chose to linger over the issue of regularization of their services, and exploited them by giving almost half the salary paid to regularly appointed teachers. It was highlighted that the teachers in this case cannot be compared with those public servants, brought in by the back door as it were, in flagrant violation of the rules. They were victims of circumstance, forced to leave their native Kashmir, where they had settled existence on account of highly disturbed conditions. Their prolonged stay in Delhi is on account of the conditions not reaching normalcy even now. Furthermore, their initial engagement was pursuant to advertisements, which they responded to. Importantly, these teachers did not occupy positions that were imminently to be filled by those from the so called regular channels. NCT always had several TGT and PGT employees; the number

of contractual employees and teachers outweighs those in regular positions. Having spent almost an entire career as contractual teachers, at the fag end, when they are likely to attain the age of superannuation, the NCT has no qualms in denying them any terminal or pensionary benefits.

27. It was lastly argued that the rule or principle of *Umadevi (supra)* cannot have universal application. In the present case nowhere had it been established that the appellants were appointed through the back channel; they responded to public notices, were selected in a fair process after their qualifications were duly verified and they were interviewed. Importantly, the state, which is bound by principles of non-arbitrariness and reasonableness, cannot legitimately deny benefits to a citizen, who flees her home and native state on account of compelling law and order reasons, on the ground that the same non-arbitrariness principle would bind it forever to the exploitative position that it took earlier, in providing contractual employment. That would be a negation of Article 14 of the Constitution.

Analysis and Conclusions

28. The issue of regularization of Kashmiri migrants was considered, debated and discussed by different branches of both the Central and State government. For instance, on 17.02.2000, the Secretary, Ministry of Human Resource Development, Department of Education, Government of India, wrote a letter to Special Secretary, Ministry of Home Affairs, Government of India and marked to various officials of the Government of NCT of Delhi, highlighting the plight of the Kashmiri migrants. In reply to this letter, the Special Secretary, Ministry of Home Affairs, wrote back stating that the Home Ministry was also of the view that these teachers should be regularized and that this benefit should not be denied to them merely on the ground that they may return to the Valley once the situation becomes normal. However, it was also stated that since the teachers were not Central government employees, the decision on their regularization had to be taken by the Delhi Government and no approval was needed from the Government of India. By letter dated 02.05.2000 addressed to officials of the Delhi Government, the Secretary of the MHRD, Department of Education, highlighted:

"The fact of the matter is that migrant teachers are not being regularized. Nor are they being given full salary. One of the points missed at one time was that there was an implicit policy decision in the Ministry of Home Affairs that the immigrant teachers had come to Delhi on a temporary basis and, had to be, sent back at some stage.

This position has now been clarified by Shri T.R. Kakkar in his D.O. letter No. 12013/10/90-K.II(2) dated April 18/20, 2000. He has stated very clearly that, the regularization of these teachers by the Delhi Government does not require any approval from the Government of India. Similarly the grant of regular pay scales of the migrant teachers cannot be denied to them merely on the ground that they may return to the Valley once the situation becomes normal. In view of this clarification of the Ministry of Home Affairs, one important plank of the argument being advanced against the regularization of these teachers falls to the ground.

During discussions with Secretary, Education it has transpired that the regularization of these teachers is-also pending because of the following reasons.

- (i) They were appointed without following the normal procedure of recruitment through the Service Selection Commission.*
- (ii) some of them do not fulfill the eligibility criteria.*
- (iii) It is felt that if they are regularized, other contract teachers in Delhi Schools, some of whom have already gone to the Court, will also ask for parity of treatment.*

It is felt that these issues can be addressed in the following manner:

- (i) With regard to the formality of regularization through the Service Selection Commission, a one time decision can be taken that all such employees will be screened by the Commission as to whether they fulfill the eligibility criteria or not. If they do and if their work and conduct has been satisfactory, the Commission can recommend their regularization as a one time measure.*
- (ii) With regard to those persons who do not fulfill the educational criteria may be seen whether any relaxation can be given as a one time measure in order to tackle this human problem. Any ineligibility on the ground a person being over age may be ignored.*
- (iii) there is no question of other employees employed on contract basis seeking parity with the migrant employees. The concession given, to the migrant employees was a deliberate act of policy by the then State Government of Delhi and was given as a one time measure in order to rehabilitate the migrants who had lost all their assets and jobs in the Valley. Other contract employees who, do not suffer from similar*

disabilities cannot seek similar treatment if they go to court, are not likely to receive any relief."

29. Similarly, the then Union Minister of Minority Affairs by a letter dated 10.11.2006, wrote to the then Chief Minister of Delhi:

*Dear Sheilaji,
You may kindly recall my telephonic discussion with you this evening about regularization of the services of Kashmiri Migrant teachers. I am really grateful for the promptness with which you so kindly extended their appointment on ad-hoc basis for three more years with the understanding that in the mean time action to regularize their services will be taken. Let me assure you that time I am as much concerned in the welfare of Kashmiri Migrants as you are. I am informed that at the time of their initial appointment they fulfilled all the QRs laid down except the relaxation in age limit. They were recruited by following the prescribed procedure at the time including advertisement in newspapers. Today, I was again approached by these teachers who have informed me that the process for the regularization has not started yet and they are not being paid salary equivalent to their regular counterparts although both carry out the same job. Unfortunately due to non regularization of the services they are denied payment towards, House Rent Allowance, City Compensatory Allowance, Transport Allowance, Dearness Pay, Children's Education Allowance and most import unlike their regular counterparts, they are not paid the bonus even on the eve of Diwali; they are not entitled to the any kind of leave be it Earned, Medical or Maternity/Latinity which is not only unjustified-but harsh too. In spite of your assurance to me they have, not yet been paid the salary for the months of May and June this year though they performed their duties like other regular teachers."*

30. On 12.02.2009, the Directorate of Education of the Government of NCT of Delhi gave a detailed point wise reply to a letter received from the All India Kashmiri Samaj airing the grievance in relation to the NCT's treatment of the Kashmiri migrants. This point-wise reply provides the standpoint of the NCT on the issue of regularization and indicates parity for the Kashmiri migrant teachers. For convenience, the tabular point-wise is reproduced below:

<i>(i) Parity of Pay Scales</i>	<i>The Kashmiri Migrant Teachers are working as TGTs/Misc and PGTs in this Directorate on contract basis on</i>
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	<p><i>consolidated monthly emoluments. Their monthly remuneration was last revised from 8000 to 11140/- p.m. in r/o TGTs/Misc and 9500 to 13160 p.m. in r/o PGTs w.e.f. 1.4.2008. After the implementation of Sixth Pay Commission, to keep parity with regular teachers, a Cabinet Note is being prepared for further enhancing their monthly emoluments.</i></p>
<p><i>(ii) Regularization of Service</i></p>	<p><i>On the recommendations of the Cabinet of NCT of Delhi, Kashmiri Migrant were appointed since 1994 on year to year contract basis, however, the cabinet, vide decision dated 8.5.2006, extended the contract for three years up to 31.3.2009. The Cabinet has also decided that instead of giving extension on yearly basis, extension might be given for the next three years. In the meantime, the department should examine the possibility of absorbing them on regular basis by allowing them to take the test for recruitment of teachers whenever it is conducted by DSSSB by relaxing the age limit also providing three chances for them to appear in the test.</i></p> <p><i>This department has already opined that regularization of services is not advisable and they can be extended the benefits of age relaxation while appearing through DSSSB with the prior approval of Hon'ble LG.</i></p> <p><i>It is further submitted that the Hon'ble Supreme Court in its judgment dated 10th April 2006 in Secretary, state of Karnataka and others v/s. Uma Devi and others has observed as under:</i></p> <p><i>“Para 38 – When a person enters a temporary employment or gets</i></p>

	<p><i>engagement as a contractual or casual worker and the engagement is not based on pro-per selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection in concerned cases, in consultation with the public service commission. Therefore, temporary contractual or casual employees cannot successfully advance the theory of legitimate expectation. Para 46. In view of our conclusion, the courts are not expected to issue directions for making such person (daily wagers) permanent in service. If sanctioned posts are vacant the state will take immediately steps for filling those posts by a regular process of selection.”</i></p> <p><i>Also, if Kashmiri Migrants are considered for regularization, it will open a pandora’s box and all other contractual teachers whose claims were rejected by the Hon’ble High Court of Delhi and even the part time teaches deployed by the vocational branch as well as those deployed by the academics like Urdu, Punjabi, Sanskrit will also claim regularization besides, such consideration will be discriminatory and may even amount to violation of orders of the Hon’ble Supreme Court and High Court.</i></p>
<p><i>(ii)(a) Possibility of return</i></p>	<p><i>The matter is beyond the purview of Directorate of Education</i></p>

<i>(b) Parity with other contract</i>	<i>The part time vocational teachers working under the Directorate of Education is getting 8200/- p.m.</i>
<i>(c) Need for fulfilling procedural formalities</i>	<i>In this regard it is informed that the Cabinet of GNCT of Delhi had directed that “the proposal was considered by the Council of Ministers and it was decided that the department should examine the possibility of absorbing them on regular basis by allowing them to take the test for recruitment of teachers whenever it is conducted by DSSSB by relaxing the age limit and also providing three chances for them to appear in the test. However, in view of the observation of Hon’ble Supreme Court cited above, the possibilities appear to be limited.”</i>

31. Similarly, on 18.05.2009, the Directorate of Education gave another point-wise reply to these issues, which is reproduced under:

<i>(ii) Parity of pay of Migrant Kashmiri Teachers with Regular – Teachers</i>	<i>The Kashmiri Migrant teachers are working as TGTs/Misc and PGTs in this Directorate on contract basis on consolidated monthly emoluments. Their monthly remuneration was last revised from RS.8000 to Rs.11140 pm in r/o TGTs/Misc and Rs.9500 to 134160 pm in r/o PGTs wef 1.4.2008. Parity of pay can only be considered for teachers appointed on regular basis and parity is covered within the larger issue of regularization. After the implementation of 6 Pay Commission on a Cabinet Note has been prepared and is being forwarded for further enhancing their monthly emoluments.</i>
<i>(iii) Regularization of the services of such teachers, without being subjected to</i>	<i>As regards regularization of their services, a letter No.15030/17/2007-K(Vol.V) dated 3.3.09 of Director (K-</i>

<p>tests/exams. Since many of them is now too old to undertake examination.</p>	<p>II) of MHA containing the Report of the Parliamentary Standing Committee of the subject has been received by this Directorate which has been taken up with relevant details for its consideration by the appropriate authority. As it involves numerous issues with larger consequences, it may take time to have final decision in the matter.</p>
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32. With respect to contractual employees generally, the Government of NCT of Delhi on 06.10.2015, by way of a cabinet decision proposed the following:

"The Government of NCT of Delhi has considered the issue of regularization of the contractual employees working in various departments of the GNCT of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015:-

In line with the Uma Devi judgment, GNCTD makes the following policy for contractual employees working against regular posts:-

1. *Every department should formulate a scheme to fill up all vacant posts.*
2. *Contractual employees working against these posts should be allowed to apply with following conditions:*
 - (a) *They should be given age relaxation.*
 - (b) *They should be given appropriate and adequate weightage of experience for that post in evaluation.*
 - (c) *Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.*
3. *Policy in para2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.*

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest."

33. Yet, the issue of regularization of the Kashmiri migrant teachers, was still left hanging. The relevant file notings of the Directorate of Education, dated 06.06.2016 are extracted below, on the issue of regularization:

"184. The brief of the case is that during the militancy in Kashmir in era of 1990's the Govt. of NCT of Delhi vide cabinet decision dated 02/04/1994 decided that one member of each Kashmiri Migrant Family may be appointed as contractual teacher depending upon his/her suitability for different category of jobs provided he/she fulfils the educational qualification as per recruitment rules. Accordingly, Kashmiri Migrant Teachers were given contractual appointment as PGTs, TGTs and Misc Category Teachers on specific terms and conditions that **"it^{ti} will not grant the appointee any right or claim for regular appointment to the post"**. Therefore, the principle of "Equal Pay for Equal Work" is not applicable in the present case.

185. However, the above said contractual Kashmiri Migrant Teachers filed the above WPC No.3989/2010 before the Hon'ble High Court seeking parity in pay and allowances at par with regularly appointed Teachers and regularization of their contractual services.

186. In this regard, it is submitted that the department was not in a position to regularize the contractual services of Kashmiri Migrants Teachers in view of the judgment dated 10/04/2006 in Appeal (Civil) No.3595-3612 of 1999 titled as Secretary, State of Karnataka Vs. Uma Devi and Others vide which Hon'ble Supreme Court has clearly expressed itself against regularization of contractual employees. Further, it will open a Pandora's box if such regularization of contractual employee working in various departments/agencies of Govt of NCT .of Delhi will also demand the same relief. Moreover, several numbers of other contractual teachers and teachers engaged on ad-hoc and daily basis are working in this department besides other organisations under the GNCTD.

187. It is pertinent to mention here that the term of appointment of the Kashmiri Migrant Teachers was lastly extended for a period of five years at a time or they attain the age of 60 years, whichever is earlier w.e.f. 1.4.2012 vide order date 11.7.2011. Further, they have been given onetime relaxation in upper age limit for the number of years Kashmiri Migrant Teachers have served in the Directorate of Education, Govt. of NCT of Delhi for appearing in examinations conducted by Delhi Subordinate Services Selection Board (DSSSB) from time to time for recruitment to the respective category of teachers to facilitate their regular appointment vide order dated 11.06.2012.

188. This Directorate sought legal opinion in the matter and the concurrence dated 9.6..2015 of the L&J Department for challenging the impugned judgment may kindly be perused at Page- 6/N.

189. Accordingly, this Directorate has already filed LPA No. 620/2015 titled as GNCTD Vs Govt. School Teachers Association (Migrants) Regd & Ors before the Division Bench challenging the said judgment dated 18.5.2015 and the next date of hearing is

08.08.2016. Besides this, some contractual Kashmiri Migrant teachers also filed LPA No. 286/2015 titled *Indu Munshi & Ors Vs UOI & Ors* seeking the same relief as ordered by the Hon'ble High Court in its order dated 18.5.2015 in WPC No. 3989/2010 and both the LPAs are being heard together.

190. However, during the pendency of the Writ Petition Govt. of NCT of Delhi has considered the issue of regularization of the contractual employees working in various department of GNCTD and approved a general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 6.10.2015 vide its order dated 19.10.2015 (Page-209/C).

191. In view of the Cabinet's decision regarding regularization of contractual employees, a policy in r/o of Guest/Contract teachers working in the Directorate of Education is under consideration. However, it was felt that the policy under consideration in the background of cabinet decision dated 6.10.2015 cannot be extended to the contractual Kashmiri Migrant Teachers because it is not justified that those teachers who have been working with the Department for more than two decades are subjected to the same criteria as that for regularization of Guest teachers and accordingly, a separate scheme is required to be formulated. Therefore, a separate policy for regularization Kashmiri Migrants Teachers working under this Directorate is under active consideration.

192. Accordingly, a detailed proposal with regard to relaxation of certain provision in the Recruitment Rules for regularization of Kashmiri Migrant Teachers was submitted to the Hon'ble LG of Delhi for approval (Page-32 to 34/N).

193. The Hon'ble LG while agreeing with the proposal in principle has desired that before considering the proposal to relax RRs for absorption/regularization of Kashmiri Migrant Teachers, the constitutional and legal damnations of the proposed policy must be examined by the Law Department as suggested by the Services Department. "

34. On 12.07.2017, a decision was taken by the Council of Ministers, which considered a note prepared by the Secretary (Education) and approved the proposal contained in paragraph 8 of the note. This note was prepared taking into consideration the views of the various departments within the Govt. of NCT of Delhi, such as the Education Department, Services Department, Administrative Reforms Department etc. The relevant paragraph of the note, which was adopted by the Council of Ministers is extracted below:

"8. PROPOSAL BEFORE THE CABINET:

The Council of Ministers may kindly recommend the Special Policy for regularization of Kashmiri Migrant Teachers (i.e. 174 nos) presently working on contract basis in the Directorate of Education, Govt. of NCT of Delhi for approval subject to the following:

I. Grant of one time relaxation in the Recruitment Rules for the posts of PGTs/TGTs/Music Teacher and Librarian with the provision of Direct Recruitment as mentioned below:

*a. **Relaxation in age:** Grant of one time relaxation to the Kashmiri Migrant Teachers in age for those serving Kashmiri Migrant Teachers who are working on contract basis from 1994 onwards.*

*b. **Method of recruitment:** According to RRs the method of recruitment is 75% promotion and 25% direct recruitment. It is proposed to seek one time relaxation in the mode of recruitment for direct recruitment as regularization of Kashmiri Migrant Teachers working as contractual employees in the Directorate of Education.*

II Relaxation in Recruitment Rules is being sought only against the method of recruitment and age limit. However as per Sub-Section (1) of Section 23 of RTE Act, 2009, National Council for Teacher Education has laid down the minimum qualification for a person to be eligible for appointment as-a teacher in Class -I to VIII. One of the essential qualifications for a person to be eligible for appointment as teacher in any of the schools referred to in Clause (n) of Section-2 of the RTE Act is that he/she should pass the teacher eligibility test which will be conducted by the appropriate Government.

Para 1 of the notification dated 23 August 2010 of NCTE preserved minimum qualifications alongwith pass in the Teacher (TET) to be conducted by the appropriate Govt. in accordance with the guidelines framed by the NCTE for the purpose. However, para-4 of the above notification of ibid date stipulates as:

Para -4: Teacher appointed before the date of this notification, :-

The following categories of teaches appointed for classes I to VII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above.

In view of the facts that the contractual KMTs were appointed in the year 1994 due to political turmoil in Kashmir Valley and in pursuance of the Hon'ble High Court order dated 18.05.2015 in WPC No.3989/2010 considering the issue of regularization of contractual Kashmiri Migrant Teachers as a peculiar as well as a special case and as per para 4 of the NCTE notification dated 23/8/2010, it is proposed that the provision of CTET may also be relaxed while regularising the contractual Kashmiri Migrant Teachers.

III. Approval of the services of Kashmiri Migrant Teachers working in the Directorate of Education on contract basis to be regularized with prospective effect (i.e. from the date of issue of such order) and no consequential benefit to be given for past services rendered on contract basis, for any purpose.

IV. Approval of the estimated expenditure of Rs. 13,16,30,688/- (approx.)/annum."

35. Moreover, at different points in time, advertisements were issued, by the Govt. of NCT of Delhi calling for application of candidates for recruitment of regular teachers. On 19.06.1994, the Govt. of NCT of Delhi through advertisement invited applications from candidates registered with employment exchanges in the NCT of Delhi for the posts of teachers to be filled up on regular basis for various subjects. Most recently, advertisements were issued by the Govt. of NCT of Delhi for recruitments for various teaching posts on 12.12.2014 and 20.12.2017. In the latter, a one-time age relaxation in the upper age limit for the Kashmiri migrant teachers, for the number of years served as teacher in the department of education, was also granted.

36. From the above, two aspects become clear. First and initially, the regularization of the migrant teachers was not implemented owing to the fact that it was thought that the situation in the Kashmir Valley was temporary and eventually the migrants would go back to the Valley. Thereafter, the regularization of the migrant teachers was refused owing to the decision of the Supreme Court in *Umadevi (supra)*. Concededly, efforts were made at some official levels to bring about the regularization of these teachers and give them benefits similar to those given to the teachers recruited regularly by the government. However, no positive decision was taken by the appropriate authorities on the issue; consequently, the migrant teachers approached this court by way of a Writ Petitions.

37. The first question which this Court proposes to address is whether the learned single judge, in the latter regularization, impugned by the NCT, fell into error in not following the decision and outcome of the other learned single judge in the earlier batch of cases, i.e. by dismissing the petitions, in W.P.(C) 2574/2010. The regularization judgment, allowing W.P.(C) 3989/2010, no doubt, does not follow the outcome of the

earlier writ petition. However, that alone is not determinative of the matter. The latter (regularization) judgment, adverts to the earlier single judgment, and for reasons, distinguishes the outcome. It is not as if the learned single judge proceeded to reject the reasoning of the earlier decision, without a discussion of its reasoning. The latter judgment noticed (and correctly, in this court's opinion) that the earlier judgment, negating the teachers' claim to regularization, was solely premised on the *Umadevi (supra)* decision of the Supreme Court. Yet, the latter decision did not stop there, but went on to explain that the Supreme Court had in at least two judgments, held that the *Umadevi (supra)* decision did not call for blind adherence. In the latter judgments, the Supreme Court upheld schemes or regularization of employees. Furthermore the regularization judgment, discussed all the relevant facts, pertaining to the teachers' plight, their having to flee their homeland in fear for their life and possessions, their continuing unsettled position, the trauma faced by them, the government's consistent thinking about a genuine need to regularize their services, *as a special and peculiar case, due to the circumstances* and all other associated facts. Having regard to these and the important fact that both judgments are under appeal – one by the teachers and the other by the NCT, warranting a close scrutiny of all the material facts and circumstances, the argument that not following the outcome in the earlier petition and instead directing regularization of the teachers' services, has vitiated the direction itself, cannot be sustained. The contention in respect of *Central Board of Dawoodi Bohra Community (supra)* is accordingly rejected.

38. The main question, which arises for consideration, is whether the judgment in W.P. (C) 3989/2010 directing regularization of the teachers' services is erroneous and contrary to the reasoning and direction of the Supreme Court in *Umadevi. (supra)*. In that decision, a Constitution Bench of the Supreme Court held *inter alia*, as follows:

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

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

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or

issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in

that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated

employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be

absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

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

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

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution

Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. 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 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 by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

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

39. The advertisements issued initially, pursuant to the NCT cabinet’s decision (on 19.06.1994) calling for applications from eligible candidates, reads as follows:

“POSTS OF TEACHERS

Government of National Capital Territory of Delhi

Directorate of Education, Old Sectt., Delhi. Last Date: 19.06.1994

Applications are invited from candidates registered with Employment Exchanges in National Capital Territory of Delhi for the posts of teachers to be filled up on regular basis for the subject/category, as specified below:-

<i>S.No. ,</i>	<i>Subject/Category</i>	<i>Nos. of Posts</i>
<i>1. PGT (Male/Female)</i> <i>Physics, Chemistry, Biology</i>	<i>English, Hindi, Sanskrit,</i>	
<i>Maths, Economics, Commerce, History, Science, Geography, Home Science, Punjabi, Physical Education, Drawing & Paintings.</i>		
<i>2. TGT (Male/Female)</i>	<i>English, Maths, Natural Science,</i>	
<i>Social Science, Hindi, Sanskrit, Punjabi</i>		
<i>3. Language Teachers (Male/Female)</i>	<i>Hindi, Punjabi, Sanskrit</i>	
<i>4. Misc. Category (Male/Female)</i>	<i>Phy. E.T., Drawing, Music, Home Science</i>	
<i>5. Nursery teacher (Male/Female)</i>		
<i>6. Primary Teachers</i>		

2. Desirous persons may contact the respective establishment branches of the Directorate of Education, Old Secretariat, Delhi from 6th June to 1994 June, 1994 (including Saturdays and Sundays) between 10,00 a.m.to 5.00 p.m. for submission of application forms published alongside.

3. The posts are reserved for candidates belonging to Scheduled Castes/Scheduled Tribes, Ex-Servicemen and Physically Handicapped as per existing instructions of Government of India on the subject.

4. Application Forms complete in all respects along with attested copies of the Degree, Certificates, Mark sheets, Employment Registration Card & three Passport-size photographs should be submitted.

5. Application forms of candidates, belonging to Scheduled Castes/ Scheduled Tribes and other reserved categories should be accompanied with the certificate issued by the competent authority.

6. It is clarified for information of all concerned that vacancies have separately, been notified with the Employment Exchange.

7. Applications received, on expiry of last date of receipt of applications,

i.e. 19.6.94, either in person or by post, shall not be entertained.

8. No application form shall be entertained after the expiry of the last date for receipt of applications i.e. 19.6.94.

For further details, please refer to "Indian Express" dated 31.5.94.

Though every care has been taken in printing this form, however, publisher is not responsible for any error."

40. It is evident from the above advertisement, (responded to by all the writ petitioners) that (i) the advertisements for the *vacancies* were notified separately in all Employment Exchanges; (ii) SC/ST based vacancies were to receive separate consideration as is evident from the requirement of their having to produce the relevant certificates; (iii) the advertisement was also widely publicized in the *Indian Express*; (iv) importantly, the advertisement stated that the posts were "*to be filled up on regular basis for the subject/category*". These are the clearest indication that when the teachers concerned were notified publicly about availability of vacancies, there was no indication that their appointments would be tenuous; rather, they had to possess the prescribed qualifications, and were to be appointed to regular vacancies subject to assessment of suitability, *after they responded to a public advertisement which did not restrict the recruitment to only Kashmiri migrant teachers*. In addition to these considerations, what is significant is that the appointment letters (a sample of which dated 10.11.1997 is on record @ page 439, Volume II LPA 620/2015) states that the appointment was "consequent upon their selection on merit and approval by the competent authority". These documents show that contrary to the contention urged, the NCT had regular vacancies, which were advertised, and care was taken to follow SC/ST reservation norms after which a process of selection of eligible candidates was followed, leading to appointment. Importantly, the advertisements nowhere limited the zone of consideration to Kashmiri migrant teachers. No doubt, after selection the teachers were appointed on contract basis, which showed that their tenures were shaky and tenuous; also they were uniformly not paid the salaries and any of the allowances prescribed for regularly appointed posts. On the other hand, the appointment was a full time one and the teacher could not accept "*any appointment paid or otherwise during the currency of the contract*". The exception made was that there was no prohibition to *part time assignment*

outside school hours. Another important fact is that according to the NCT's Directorate of Education the criteria for appointment of Kashmiri migrant teachers included that they had to hold at least a second class degree in the subject; compulsory holding of B.Ed. degree and *had to be registered as Kashmiri migrants, in the Deputy Commissioner's Office.*

41. A close scrutiny of the process followed by the NCT while employing these Kashmiri migrant teachers tell us that when the teachers were asked to apply, they were not told that the appointments would be contractual; on the other hand, by all indications, they were informed that regular vacancies existed and that the appointments would be pursuant to a public selection or recruitment process. Yet, when the offers of appointment were made, the terms were contractual. It is not disputed by the NCT *even today, that when the appointments were made, to vacancies that were regular; the teachers even today occupy those posts.* Furthermore, it is not the NCT's case, that at any given time, or even now, all regular posts – save and except those occupied by the Kashmiri migrant teachers, were filled up. On the contrary, during the arguments, it emerged that in the long 22 year period, attempts to fill up regular vacancies were at best half hearted; there were only four instances of previous attempts to advertise and fill some vacancies; even those were not successful. This meant that these migrant teachers have not occupied the posts, and kept out those eligible or “more suitable” according to the *Umadevi (supra)* decision; nor have they occupied or held the posts, pursuant to court interim orders.

42. This court had previously extracted the relevant portion in the *Umadevi (supra)* decision. The Government of NCT has relied on *Ranvijay Singh (supra)*, *Nihal Singh (supra)* and *Amarkant Rai (supra)* to say that subsequent decisions of the Supreme Court have followed *Umadevi (supra)*, and ruled in *Jasmer Singh (supra)* and *Charanjit Singh (supra)* also that the principle of equal pay for equal work applies only if the employee who complains of violation of Article 14 can establish that she or he had the requisite qualifications, was recruited regularly to the post against an existing vacancy and not in a contractual or stop gap capacity.

43. In *Umadevi (supra)* also however, the court had recognized that regularization by way of exception, of the category of employees who were appointed irregularly, as

explained in the previously cited cases, was legally sound. In one of those cases, *R.N. Nanjundappa vs. T. Thimmiah and Anr* 1972 (1) SCC 409 the Supreme Court had held as follows:

“Even if the method of recruitment and qualifications are not laid down the three modes are specific. Counsel on behalf of the State stated that the respondent was not promoted but that it was a case of selection because the respondent was the only person fit for that post. A selection would have to be made by inviting applicants and then selecting them.... Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment.”

44. Likewise, in the other case cited in *Umadevi (supra)*, i.e. *B.N. Nagarajan v State of Karnataka* 1979 (4) SCC 407 the ruling in *Nanjundappa (supra)* was approved by a larger bench of 3 judges. Thus, there can be – even according to *Umadevi (supra)*, no universal rule regarding bar to regularization. Each case is to be considered according to the facts and circumstances shown to the court. The Supreme Court directed regularization of employees who were working for over 24 years, in *Sheo Narain Nagar & Ors. v State of Uttar Pradesh & Ors*, AIR 2018 SC 233. It was held as follows:

“8. When we consider the prevailing scenario, it is painful to note that the decision in Uma Devi (Supra) has not been properly understood and rather wrongly applied by various State Governments. We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued. Though this Court has emphasised that incumbents should be appointed on regular basis as per Rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms. This situation was not envisaged by Uma Devi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they

are entitled on the basis of Article 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in *D.S. Nakara v. Union of India*, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of *Uma Devi (supra)*. Thus, the time has come to stop the situation where *Uma Devi (supra)* can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006. The employment cannot be on exploitative terms, whereas *Uma Devi (supra)* laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/adhoc basis or otherwise. This kind of action is not permissible, when we consider the pith and substance of true spirit in *Uma Devi (supra)*.

9. Coming to the facts of the instant case, there was a direction issued way back in the year 1999, to consider the regularization of the Appellants. However, regularization was not done. The Respondents chose to give minimum of the pay scale, which was available to the regular employees, way back in the year 2000 and by passing an order, the Appellants were also conferred temporary status in the year 2006, with retrospective effect on 2.10.2002. As the Respondents have themselves chosen to confer a temporary status to the employees, as such there was requirement at work and posts were also available at the particular point of time when order was passed. Thus, the submission raised by learned Counsel for the Respondent that posts were not available, is belied by their own action. Obviously, the order was passed considering the long period of services rendered by the Appellants, which were taken on exploitative terms.

10. The High Court dismissed the writ application relying on the decision in *Uma Devi (supra)*. But the Appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment. Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred w.e.f. 2.10.2002. The Appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of *Uma Devi (supra)*. Since the Appellants had completed 10 years of service and

temporary status had been given by the Respondents with retrospective effect in the 2.10.2002, we direct that the services of the Appellants be regularized from the said date i.e. 2.10.2002, consequential benefits and the arrears of pay also to be paid to the Appellants within a period of three months from today.”

45. It was observed in *Pratap Kishore Panda v Agni Charan Das*, 2015 (11) SCALE 609 that “..the most that can be done for such employees is for the State Government to devise a scheme, as a one-time measure, for their absorption so long as the Governing Statute or the Rules and Regulations are not infringed.” Earlier, in *State of Jharkhand v Amar Prasad* 2014 (7) SCC 223, the Supreme Court had held that regularization of eligible employees had to be undertaken. In *Malathi Das (Retd.) Now P.B. Mahishy & Ors v Suresh & Ors.*, 2014 (13) SCC 149, the court had ruled that denial of regularization to some and grant to others could not be countenanced:

“In the aforesaid undisputed facts it is wholly unnecessary for us to consider as to whether the cases of persons who were awaiting regularization on the date of the decision in Umadevi (supra) is required to be dealt with in accordance with the conditions stipulated in para 53 of Umadevi (supra) inasmuch as the claims of the Respondent employees can well be decided on principles of parity. Similarly placed employees having been regularized by the State and in case of some of them such regularization being after the decision in Umadevi (supra) we are of the view that the stand taken by the Appellants in refusing regularization to the Respondents cannot be countenanced. However, as the said stand of the Appellants stem from their perception and understanding of the decision in Umadevi (supra) we do not hold them liable for contempt but make it clear that the Appellants and all the other competent authorities of the State will now be obliged and duty bound to regularize the services of the Respondents (74 in number) which will now be done forthwith and in any case within a period of two months from the date of receipt of this order.”

46. The judgment in *State of Rajasthan & Ors. v. Daya Lal & Ors.*, AIR 2011 SC 1193 considered the scope of regularisation of irregular or part-time appointments in different situations and took note of settled principles relating to regularisation and parity in pay relevant in the context of the issues involved. The summation by the court is as follows:

“8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates.”

47. *Secretary to Government, School Education Department, Chennai & Ors. v Thiru R. Govindaswamy & Ors*, 2014 (4) SCC 769 followed *Daya Lal (supra)* in regard to the same question of regularization. Even earlier, the Supreme Court had adopted a nuanced approach while upholding a High Court’s direction to regularize employees; in *State of Maharashtra & Ors v Sanjay Bhalchandra Umbrajkar & Ors.*, 2014 (13) SCC 268, the Court stated as follows:

“11. Since it is not in dispute that the private Respondents had been employed prior to 12.02.1987 after due selection and had continued in employment for over 10 years as on the date of filing of the writ petitions, their cases were clearly covered by the GRs issued by the State

Government and it is not possible to find any fault in the direction given by the High Court for their appointment against the vacant Class-III posts. 12. We may add that in the reply affidavits filed before the High Court, the Appellants had not disputed that the Respondents had been recruited after undergoing the selection. Therefore, the High Court rightly observed that they cannot be treated as backdoor entrants and denied relief by applying the ratio of Umadevi's case. As a matter of fact, the State Government and its functionaries should have taken cognizance of the facts that the Respondents were not backdoor entrants; that as on the date of filing the writ petitions, they had continuously worked for more than 10 years and that regular selection could not be made due to non-constitution of the Subordinate Service Selection Board and non-holding of examination for a pretty long time and issued orders for absorption of the unpaid employees in the regular cadre.”

48. The decisions cited above therefore, show that the Supreme Court has not adopted a “one size fits all” principle in regard to how orders of regularization are to be made. Rather, the extent of compliance with the rules (recruitment through public advertisement, to regular posts, where vacancies exist) is insisted upon. Added to these is the court’s insistence that the candidate should be qualified to be selected and discharge the functions prescribed for the post. On this issue, the reliance placed by the learned Single Judge in the regularization judgment, on the decisions of the Supreme Court in *Nihal Singh (supra)* and *Amarkant Rai (supra)* is, in our opinion, apt. Doubtlessly, the learned Single Judge’s decision in W.P.(C) 2574/2010, which is appealed by the teachers, was rendered before the decisions of the Supreme Court in *Nihal Singh (supra)* and *Amarkant Rai (supra)*, and hence the learned Single Judge did not have the benefit of considering those decisions. The decisions in *Nihal Singh (supra)*, *Amarkant Rai (supra)*, as well as the later decision in *Sheo Narain Nagar (supra)*, all clarify that *Umadevi (supra)* does not lay down a straight-jacket rule of uniform application. The Court in these decisions, after considering the rule laid down in *Umadevi (supra)*, nonetheless proceeded to grant regularization benefit to the concerned individuals, showing that *Umadevi (supra)* does not contemplate a blanket prohibition on regularization of contractual employees. Thus, the NCT’s submission that the regularization judgment cannot be sustained is insubstantial and therefore rejected.

49. The essential facts to consider the teachers’ claim for a direction to regularize

their services, upon an overall analysis of the facts of this case are as follows:

- (1) All the petitioners are Kashmiri migrants, who had to flee their native places, abandoning their hearth and home in fear of their life, with little or no personal possessions, when they arrived in Delhi.
- (2) Admittedly, on account of their helpless condition, the Union Government and the NCT of Delhi arranged for their make shift camp accommodation; they were even given some living subsidy to enable them to eke out their existence; some food rations were also provided.
- (3) Realizing that without further help it was very difficult, if not well nigh impossible for them to secure gainful employment or worthwhile livelihood on stable basis, the Govt of NCT decided in principle to employ such of the migrants from one family member in each family who could and possessed requisite prescribed qualifications, to work as teachers;
- (4) Pursuant to the above decision, advertisements were issued calling for applications from eligible candidates possessing the necessary prescribed qualifications including the one of having to possess B.Ed degree and a degree in the concerned subject or discipline for various class of teachers;
- (5) The advertisements did not say that the basis of employment was to be contractual or that the remuneration would not be in the prescribed pay scale, but would be lower than that;
- (6) The cabinet note had taken account of the fact that regular vacancies did exist;
- (7) Advertisements were issued in the public domain, and applications were called from Employment Exchange.
- (8) The advertisements did not limit the recruitment to Kashmiri migrants alone;
- (9) Regular vacancies did exist;
- (10) Upon selection on merit, the teachers were offered appointment *on contract basis, which indicated tenuous terms, but to full time regular positions, on fixed remuneration basis, far below the prescribed pay scales.*
- (11) The teachers accepted the offer, for want of any choice. However the circumstances under which they were constrained to accept left them only

- with the alternative of starvation and eking out a tenuous existence based on government doles.
- (12) Initially the contractual employment was for a year or so; however, it was extended from time to time; later extensions were for three year spells, followed by 5 year spells.
- (13) The teachers functioned against regular vacancies and continue to do so for the past 22 years or more.
- (14) Only four recruitment processes took place and not for all vacancies, in the meanwhile. It was only in 2011 that blanket relaxation of the maximum age criteria was given to Kashmiri migrant teachers. By then most of them had worked for over 12 years, continuously, and were in the wrong side of the forties, age-wise.
- (15) The teachers shared the burden of instructing pupils in NCT government and MCD schools just in the same manner as all other teachers appointed .
- (16) There is no instance of any teachers work having been substandard or not up to the mark; no such fact was brought to the notice of the court during the entire time they worked in the schools.
- (17) Though increased remuneration was provided on four occasions to the teachers, that is much lower than the regular pay scales together with allowances.
- (18) The teachers are not occupying the regular posts on the strength of any interim order of the courts.
- (19) Upon completion of 60 years, the teachers' employment ceases; they in effect retire. However, irrespective of the length of their services, they are not given a single terminal benefit such as provident fund, gratuity, pension etc. The same applies in the case of untimely demise of any such Kashmiri migrant teacher.
- (20) Each of the teachers has completed more than 20 years working in the same capacity as contractual teacher though regular vacancies exist.
- (21) The issue of regularization was always under consideration by the

respondents. Initially there was a thinking that it would be prudent to wait, inasmuch as the official thought was that such migrants could return to Kashmir. A wait and watch policy was therefore adopted.

(22) When it became apparent that the migrant teachers might never be able to return to Kashmir, the Government decided in principle to extend the contracts for a longer period of 5 years, as a matter of policy.

(23) It is only in 2017 the final decision not to regularize the Kashmiri migrant teachers, was taken as it was felt that regularization would create a wrong precedent.

50. The Govt of NCT's stand that the petitioner teachers could not claim regularization, as they were aware that their appointment was contractual, in the context of the overall facts set out below, is superficial and unacceptable. Plainly, the appointments were made by following a constitutionally acceptable mode, after due publication of advertisements and processing applications. In *Excise Superintendent v KBN Vishweshwara Rao*, 1996 (6) SCC 216, equality of opportunity in the matter of employment was considered by the Supreme Court, which noticed the earlier decision in the case of *Union of India v. N. Hargopal*, 1987 (3) SCC 308 and observed as follows:

"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and

employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

51. In *Arun Tewari v Zila Mansavi Shikshak Sangh*, 1998 (2) SCC 332, where names were called for from the Employment Exchange, but no advertisement was issued. Referring the decision in the cases of *Hargopal* (supra) and *K.B.N. Visweshwara Rao* (supra), the Supreme Court observed as follows:

"21. There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue."

52. A similar issue relating to employment in consonance with Articles 14 and 16 of the Constitution of India, was considered in *Union Public Service Commission vs. Girish Jayanti Lal Vaghela*, 2006 (2) SCC 482, where, the Supreme Court held as follows:

"12. Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment or appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

53. In the present case, as noticed earlier, the teachers' appointment was preceded by invitations to apply through public notice as well as applications through Employment Exchange; these teachers held the requisite prescribed qualifications and were appointed to regular vacancies. A selection process preceded their appointment. Thus, all the essentials for a non-fortuitous employment were satisfied; the State chose to treat them as contractual appointees. Their appointments could not be termed as "back door" nor did they continue despite selection of deserving candidates, who had to be accommodated; nor did they continue on the strength of any court order. In these circumstances, even according to the application of the *Umadevi (supra)* judgment, the benefit of regularization cannot be denied to them.

54. Turning to the issue of equal salary and remuneration, the Govt of NCT of Delhi had argued that the teachers could not question their emoluments, because they had accepted their contractual status and functioned in that capacity for over a decade and a half. The teachers' argument is that they had practically no choice; the alternative to accepting the job with reduced emoluments was starvation or no employment. Such a Hobson's choice is not meaningful. This court agrees with the contention and holds that there cannot be any estoppel in such situations, barring claims to parity. Long ago, in *Sanjit Roy v State of Rajasthan*, AIR 1983 SC 328, the Supreme Court characterized as forced labour the acceptance, under compulsion of circumstances, by a person without employment, remuneration that was lower than the minimum wage and stated "*that it may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under the law to receive.*"

55. In the present case, even in the case of private unaided schools, teachers have to be paid the same emoluments as that mandated by rules as payable to teachers of equivalent grades in Govt of NCT schools and those managed by Municipal corporations (Section 10 of the Delhi School Education Act). And the Supreme Court has settled long ago that teachers are not "workmen"; in *Miss A. Sundarambal v State of Goa*, AIR 1988 SC 1700 it was held that:

“Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act.”

56. Given these factors, this court is of the opinion that payment of not even the minimum of the scale prescribed by the state for its teachers would constitute violation of Article 14, because then, given the dominant position of the state as the employer, it can, and in fact, has, made the teachers in these cases accept and continue in employment at less than half the salaries prescribed for their regular staff, in the government schools.

57. The Govt. of NCT of Delhi had cited three judgments of the Supreme Court to say that the principle of “equal pay for equal work” is inapplicable in the facts of this case. In *State of Punjab and Ors. vs. Jagjit Singh and Ors.* 2017 (1) SCC 148 the Supreme Court considered no less than 35 previous judgments, including the three decisions cited by the Govt of NCT as well as *Umadevi (supra)*, and held as follows:

“30. We, therefore, do not see that any law has been laid down in para 55 of the judgment in Umadevi case. Directions were issued in view of the limited controversy. As indicated, the State's grievances were limited. Yet again, we are of the view, that the full bench erred in referring to the above observations, to draw its conclusions. Our reasons are summarized hereinbelow:

(i) It is apparent, that this Court in State of Punjab v. Surjit Singh (2009) 9 SCC 514, did hold, that the determination rendered in paragraph 55 of the judgment in the Secretary, State of Karnataka case (2006) 4 SCC 1, was in exercise of the power vested in this Court, Under Article 142 of the Constitution of India. But the above observation does not lead, to the conclusion or the inference, that the principle of 'equal pay for equal work' is not applicable to temporary employees. In fact, there is a positive take-away for the temporary employees. The Constitution Bench would, in the above situation, be deemed to have concluded, that to do complete justice to the cause of temporary employees, they should be paid the minimum wage of a regular employee, discharging the same duties. It needs to be noticed, that on the subject of pay parity, the findings recorded by this Court in the Secretary, State of Karnataka case (2006) 4 SCC 1, were limited to the conclusions recorded in paragraph 55 thereof (which we have dealt with above, while dealing with the case law, on the

principle of 'equal pay for equal work').

(ii) Even in the case under reference-State of Punjab v. Surjit Singh (2009) 9 SCC 514, this Court accepted the principle of 'equal pay for equal work', as applicable to temporary employees, by requiring the State to examine the claim of the Respondents for pay parity, by appointing an expert committee. The expert committee was required to determine, whether the Respondents satisfied the conditions stipulated in different judgments of this Court including State of Punjab v. Charanjit Singh (2006) 9 SCC 321, wherein this Court had acceded to the proposition, that daily-wagers who were rendering the same duties and responsibilities as regular employees, would be entitled to the minimum wage payable to regular employees. And had therefore, remanded the matter back to the High Court for a fresh adjudication. Paragraph 38 of the judgment in State of Punjab v. Surjit Singh (2009) 9 SCC 514, wherein the remand was directed, is being extracted below:

38. We, therefore, are of the opinion that the interest of justice would be subserved if the State is directed to examine the cases of the Respondents herein by appointing an expert committee as to whether the principles of law laid down herein viz. as to whether the Respondents satisfy the factors for invocation of the decision in State of Haryana v. Charanjit Singh (2006) 9 SCC 321 in its entirety including the question of appointment in terms of the recruitment Rules have been followed.

(iii) For all the above reasons, we are of the view, that the claim of the temporary employees, for minimum wages, at par with regularly engaged Government employees, cannot be declined, on the basis of the judgment in State of Punjab v. Surjit Singh (2009) 9 SCC 514.

54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, Under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides

being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

56. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;]

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court Under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and

unambiguous right and is vested in every employee-whether engaged on regular or temporary basis.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned Counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the Appellants, that the Respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (-at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post.”

58. In the facts of the present cases too, the court is of the opinion that the mere nomenclature of “contract teachers” is an artificial one given to the teachers who

approached this court through the writ petitions that have led to these appeals; they were appointed against regular vacancies, their services are unbroken and have not been continued on account of any stay or court directed interim order; their appointments were pursuant to a constitutionally recognized and acceptable procedure of advertisement and calling names from employment exchange; they each held and hold the requisite qualifications, including B.Ed; all of them were interviewed before their appointment. For these reasons, having regard to their unbroken employment for over two decades, in line with the decision in *Umadevi (supra)* as understood in *Pratap Kishore Panda (supra)*, *Malati Dass (supra)* and *Sheo Narain Nagar (supra)*, the said Kashmiri migrant teachers are entitled to be treated as regular appointees. They shall also be entitled to provident fund benefit, gratuity and pension upon attaining the age of superannuation. If any of the petitioners or any other Kashmiri migrant teacher has already attained superannuation or has died in the interregnum the Govt of NCT of Delhi shall calculate their entitlement and release them to such retired employees, and in the case of death, release such amounts to the legal representatives of such deceased employees.

59. This court states that it is useful to recollect, in the context of the present case, that security of teachers' tenure of employment, and their tenure (as commensurate with the role they play in society) was recognized long ago and re-stated in the International Labour Organization (ILO)/United Nations Education, Social and Cultural Organization (UNESCO) *Recommendation concerning the Status of Teachers (1966)* over 51 years ago. The Recommendations noted and outlined *inter alia*, the following objectives:

“Recognizing the essential role of teachers in educational advancement and the importance of their contribution to the development of man and modern society, Concerned to ensure that teachers enjoy the status commensurate with this role..”

60. The Recommendations substantively stated as follows:

“45. Stability of employment and security of tenure in the profession are essential in the interests of education as well as in that of the teacher and should be safeguarded even when changes in the organization of or within a school system are made.

46. *Teachers should be adequately protected against arbitrary action affecting their professional standing or career.”*

61. The underpinning of these values is rendered poignant in India, which has now guaranteed basic or primary education, as a universal right, by amending the Constitution and inserting Article 21A. This right can be meaningfully exercised only through the medium of effective teachers, who can inspire, instruct and inculcate both values and learning content, vital to the growth and well being of the coming generations. Continuing to deprive teachers of their rightful status and denying them dignity, which inevitably follows with insecurity of service and pitiable service conditions, would result in our society's never being able to achieve these aims.

62. Lee Iacocca, a successful automobile executive and management thinker, once remarked that in a completely rational society, *“the best of us would be teachers and the rest of us would have to settle for something else.”* It is not in everybody's ken to be a teacher; they play an extraordinary part in the lives of their pupils, in shaping their thoughts and personalities. Our society values teachers, who are venerated to the same level of parents, worthy of worship. It is a sad day for such a proud society that teachers have to reach out to courts, for what is justly their due. That this was the case with migrant teachers, who had to toil for these 20 years, with less than the minimum scale, is a sad commentary for the state which in the first place could not assure the security and safety of their life and possessions that led them to flee their native state and become refugees, in a manner of speaking in their own country. Whatever compulsions the Govt of NCT of Delhi and the municipal corporations had or reservations they harbored -in relation to regularizing teachers, applicable to contract teachers otherwise (whose employment or engagement might have been for other reasons), could not have weighed with these authorities in denying these benefits to the Kashmiri migrant teachers. Their condition sets them apart and defines a distinctive exception.

63. In view of the foregoing analysis and reasons, the following conclusions and directions are issued:

(a) All the Kashmiri migrant teachers who approached this court, under Article 226 of the Constitution of India, and those whose cause has been espoused by

the first respondent society in LPA No. 620/2015 are held to be entitled to regularization; the Govt of NCT of Delhi and the East Delhi Municipal Corporation, South Delhi Municipal Corporation, North Delhi Municipal Corporation and the New Delhi Municipal Council (the latter four collectively referred to as “the municipal corporations”) shall pass appropriate regularization orders, stating that they are regularly appointed teachers from the date of their first appointment. Such orders shall be issued within eight weeks from today;

- (b) The said regularized teachers shall be entitled to fitment in the lowest stage of pay prescribed for the post occupied by them with effect from 1 January 2009 and also entitled to annual increments in that grade, for all these intervening years. Consequently, they shall be paid the differential amounts they are entitled to, towards the total emoluments they can draw (including dearness allowance and all other allowances), on the basis of what was actually paid to them and what they are entitled to each year, including the increase in pay scales based on recommendations of the seventh pay commission and allowances payable under the amended rules;
- (c) In the case of all serving teachers, the amounts in terms of the above direction, shall be calculated and appropriate fitment and fixation orders, shall be issued to each of them within ten weeks from today. While making payments, it is open to the Govt of NCT and the municipal corporations, to withhold one fourth of such total amount as contributions towards provident fund by opening separate PF accounts in respect of each of them.
- (d) While making payments in accordance with the above directions, the Govt of NCT and the municipal corporations shall ensure that the lump sum payments shall be appropriately spread out in accordance with provisions of the Income tax Act, to ensure that deductions are spread out, and minimum tax effect is felt by such teachers. The Govt of NCT of Delhi and the municipal corporation shall render all assistance with the income tax authorities in this regard.

(e) The Govt of NCT of Delhi and the municipal corporations are also directed to extend pensionary and other terminal benefits to the said teachers, including leave encashment, gratuity, etc. In the case of retired employees, appropriate pension fixation orders shall be issued – again within 10 weeks. In their cases too, regularization shall be made effective from dates of initial appointments. They shall be entitled to gratuity, differential pay amounts and pension arrears all of which shall be paid within 10 weeks. A similar direction is issued in the case of deceased employees; their legal representatives shall be entitled to those amounts within 10 weeks.

64. The petitioners' hope of returning to their homes, and for peace in the Valley may not yet be attainable; but the acceptance of their claims, should act as a balm, re-kindle their confidence in the society and our commitment to equality and equal opportunity. Hopefully, this is the "*new day to dawn and the new evening to descend.*" that Siddhartha Gigoo wrote about (and which was quoted in the epigraph to this judgment).

65. In view of the above analysis, conclusions and directions, the judgment in W.P.(C) 3989/2010 is upheld; the Govt of NCT of Delhi's appeal (LPA 620/2015) is rejected; LPA 286/2015 – preferred by the teachers is allowed; the impugned judgment in W.P.(C) 2574/2010 is set aside for the above reasons. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 23, 2018