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| 11  01/07/2013 | **For the Petitioner :**  Mr. A. K. Banerjee,  Ld. Adv.  Mr. B. N. Roy,  Mr. R. A. Chowdhury,  Ld. Advs.  **For the Respondents :**      As before us, both Mr. Banerjee representing the petitioners and Mr. Roy representing the State Respondents are present today, we have taken up this application pending since 2010 for final hearing and order.  Shorn of unnecessary detail, the case of the petitioners is that initially they were appointed on ad hoc basis to the post of part time Instructor on daily remuneration basis between 1988 and 1989, subsequently, the Government took a decision by an order dtd. 14 August 1996 for their absorption with a specific stipulation that the order of absorption / regularization shall take effect from the date of issue of the order. It is also pertinent to mention that while issuing such order of regularization, the Government was considerate enough to condone even the over age of some of the persons affected by that order.  The petitioners earlier approached this Tribunal with a similar prayer for counting of their absorption /  **Cont. …………….. P/2**  regularization from the date of their initial appointment with consequential benefit thereof.  **Contd…..**  **Order No.11**  **Dtd.01/07/2013**  The Tribunal disposed of that application with a condition that if the authority satisfies that there was available sanctioned post and the petitioners were engaged through due selection process, then, their prayer for counting of their absorption from their initial appointment should be considered.  As the authority did not take any action as per direction of this Tribunal, a contempt application was also filed and subsequently, the authority came with a reply that neither there was sanctioned post nor there was any due selection process at the time of initial appointment of the petitioners.  The petitioners in this application have filed a letter of the department indicating that there was available sanctioned post and the petitioners were engaged through due selection process.  The department also raised a question on the issue of absorption from the initial date of appointment on the ground of embargo having been in force at that time. The petitioners have also furnished information obtained through RTI Act that there was no such embargo at the relevant time.  In the above background of fact, State  **Cont. …………….. P/3**  Respondent has filed reply which, on its face value, cannot be given any importance at all, since, the department, in reply, has questioned the engagement of the present petitioners as part time instructor which cannot be challenged by the department any longer after issue of the order of their regularization.  **Contd…..**  **Order No.11**  **Dtd.01/07/2013**  The petitioners, in their rejoinder, have reiterated their stand that since, on record, there is document to satisfy availability of sanctioned post and selection of the petitioners through due process, the earlier order of the Tribunal should be honoured and the petitioners should be treated as absorbed from the date of their initial appointment.  Mr. Banerjee appearing on behalf of the petitioners has mentioned before us the rejoinder of the petitioners, the correspondence of the department indicating availability of sanctioned post and selection through due process as well as subsequent information regarding non-existence of any embargo.  We have carefully considered submission of both Mr. Banerjee and Mr. Roy. We do not find any legal infirmity in our own order where we directed the authority to consider the case of counting of that period as regular when the petitioners were initially  **Cont. …………….. P/4**  appointed provided there was existence of sanctioned post and the petitioners were selected through due process.  **Contd…..**  **Order No.11**  **Dtd.01/07/2013**  As regard the question of selection of the petitioners through due process, having regard to the entire record, we do not find any scope to raise any doubt that the petitioners were selected through due process.  The trouble begins regarding availability of sanctioned post at the time when the petitioners were engaged on ad hoc basis.  We repeat that had there been regular sanctioned post and had the petitioners been considered against regular sanctioned full time post, the petitioners have sufficient ground to get their relief as prayed for in this application.  The reply to above enquiry must be found from a plain reading of the order of regularization issued on 14th August 1996. It has been clearly stated under the subject “absorption of the part time (casual) Instructor engaged under the Directorate of Industrial Training in different ITI’s” that due to prohibitory order issued by the High Court at Calcutta, the authority could not engage Instructor in different trade units and to  **Cont. …………….. P/5**  overcome the deadlock, Government created some post of part time (casual) Instructor in 1986 keeping in abeyance the same number of identical post of regular establishment.  **Contd…..**  **Order No.11**  **Dtd.01/07/2013**  From the above portion of the memorandum, we find that department never supplied any wrong information, but, department failed to clarify the information in its proper perspective. We gather from the memorandum of 1996 that, there was available sanctioned post, but, in view of prohibitory order of Hon’ble High Court regarding filling up of those sanctioned post on full time basis and at the same time, to manage the affair of different Institute, Government adopted a temporary measure of sanctioning Ad hoc part time post keeping in abeyance identical number of full-time sanctioned post.  Thus, it is clear from the stipulation of memorandum that, although, there might be regular sanctioned post of Instructor, but, when the petitioners were engaged, they were engaged not against those full-time sanctioned post of Instructor, but, against creation of Ad hoc part-time (casual) Instructor.  Now, we may refer a very relevant decision of Hon’ble Supreme Court in this context which is  **Cont. …………….. P/6**  reported in CH. NARAYANA RAO Vs. UNION OF INDIA AND ORS. reported in (2010) 10 Supreme Court Cases, Page 247. It has been held in that decision by their Lordship after discussing other decisions on the similar subject that if a person is engaged purely on ad hoc basis on daily wage basis and if at that time he was not considered against the regular available sanctioned post, even if his service is regularized afterwards, he cannot get the benefit of counting of his service from the date of his initial appointment which was purely ad hoc in nature.  **Contd…..**  **Order No.11**  **Dtd.01/07/2013**  Coming to the fact of the present case, we find that the petitioners were indeed selected through a selection process, but, they were engaged as part time (casual) Instructor and not against any sanctioned full time post, but, only against the creation of part time post after keeping in abeyance the available sanctioned post at the relevant time. In view of the judgement already referred to above, in the given facts and circumstances, we do not find any justifiable ground to direct the authority to give the petitioners benefit as claimed in their application. We, therefore, dismiss this application on contest.  Plain copy to both sides.  Sd/- Sd/-  Rajat  **(SAMAR GHOSH) (A.K.BASU)**  **MEMBER(A) CHAIRMAN** |  |