

(2006) 01 DEL CK 0114

In the Delhi High Court

Case No : LPA 1027 of 2004 and LPA 65 of 2005

Anil Kumar Sharma and Another

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Citation : (2006) 01 DEL CK 0114

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : V. Shekhar, for the Appellant; Amita Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of learned Single Judge dated 17.9.2004 by which he has dismissed the writ petition. Heard learned counsel for the parties and perused the record. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

2. By this judgment LPA Nos. 1027/2004 and LPA 65/2005 are being disposed of as they involve common questions of law and fact. As many as nine petitioners filed writ petition No. 428/88 out of which this present appeal arises. The prayer in the writ petition was for a writ of mandamus to the respondents to consider the petitioners for appointment as Surveillance Workers and to fill up the available vacancies.

3. In para 2 of the writ petition, it is stated that the basic challenge in the writ petition was to the Circular dated 16.3.88 which is Annexure A to the writ petition by which applications were invited for appointment as Surveillance Worker/basic health worker from the Anti Malaria/D.D.T. Beldars & Jamadars.

4. The petitioner applied against the said circular, but it is alleged that their applications were not accepted. The petitioners claimed to be working in the

Municipal Corporation from 1978 as Malaria daily wage beldars. It is alleged that the petitioners were entitled to be regularized.

5. A counter affidavit was filed in the writ petition on behalf of the respondents. In para 2 (a) of the same it is stated that as per the recruitment regulations to the post of surveillance worker as framed by the respondent Corporation vide its resolution No.809 dated 7.3.74, 50% of the posts were to be filled up by promotion from departmental candidates and 50% by direct recruitments. By Notification dated 2.8.85 the recruitment regulations were changed and it was provided that 95% posts would be filled up by direct recruitment and 5% by promotion .

6. In respect of the dispute relating to the filling up of the posts of surveillance workers, the Anti malaria Chaturath Shreni Union filed a suit in respect of filling up of about 200 posts which were lying vacant. By his judgment and decree dated 21.7.87 the Sub Judge Delhi decreed that the said posts of surveillance workers be filled up by considering the cases of departmental candidates in service till 12.8.85 who had the requisite qualifications as laid down in the regulation No.806/225. Copy of the said judgment dated 21.7.85 is annexure A to the counter affidavit. Pursuant to the said judgment and decree dated 21.7.87 the respondents have been filling up the posts of surveillance workers from amongst the departmental candidates in service on 12.8.85 and having requisite qualifications.

7. Apart from the appointment being made pursuant to the aforesaid judgment in para 2 of the counter affidavit, there are nearly 1000 regular beldars with the respondents who were in regular service prior to 12.8.85 and since the number of posts of surveillance workers to be filled up are about 200 only, hence even on merit the said posts would be filled up by said workers as the criteria for promotion is seniority, subject to eligibility. Since the petitioners were not regular on 12.8.85, they were not eligible for promotion.

8. In para 5 of the counter affidavit it is denied that the benefit was denied to petitioners for any ulterior motive. It is stated that regularization was done in a phased manner and whosoever was eligible was regularized. Petitioners applied as direct candidates and not as departmental candidates for appointment as surveillance workers. However, they were not eligible and hence could not be appointed.

9. The learned Single Judge has given a detailed judgment and dismissed the writ petition and we are in agreement with the reasons given in his judgment.

10. A perusal of the appointment order of one of the appellants, Anil Kumar Sharma in LPA 1027/2004 states that he was appointed purely on daily wage basis on purely temporary capacity for a period of six months and his service could be terminated at any time. The said order states:-

Municipal CORPORATION OF DELHI

(ANTI MALARIA OPERATIONS)

G-74, Connaught Place, New Delhi.

No. AMO(HQ)/Esstt/81/3075 Dated :25.3.81 56, Sh.Anil Kumar Sharma,

S/o Sh. Bishan Dayal Sharma

H.No.962, Najafgarh

New Delhi-110043

Subject :- Appointment as Surveillance worker (AMI) for Domestic Breeding.

MEMO

On the basis of his merit in the selection list of Surveillance Workers in the Anti Malaria Operations, he is hereby offered a job of AMI (Surveillance Worker) on daily wages @ Rest.12-25 per day for a period of six months likely to be started w.e.f. 01/04/81, as per orders dated 02/03/81 of D.C.(H) on the following terms and conditions:-

1. He can be posted/transferred to any place under the jurisdiction of Municipal Corporation of Delhi.
2. The post is purely temporary and his services can be terminated at any time without any notice or assigning any reason.
3. The appointment is further subject to his being declared medically fit and also subject to verification of his character and antecedents.
4. He will have to give an undertaking to the effect that he has not more than one wife living/will not marry more than one wife.
5. After expiry of six months period, his services shall stand discharged automatically without any notice.
6. No TA/DA will be permissible for joining the appointment.

If the above terms and conditions are acceptable he should report in person to undersigned by 31.3.87 failing which the offer of appointment may be treated as cancelled. He must bring within the original and attested copies of certificates, and testimonials.

11. It is well settled that a temporary employee has no right to the post vide State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, .

12. As observed by the learned Single Judge in para 12 of the impugned judgment, the MCD was bound to apply the eligibility criteria which existed before 12.8.85. The impugned circular dated 16.3.88 only followed the conditions reflected in the 1973 regulations. Hence, in our opinion there is no infirmity in the Circular dated 16.3.88.

13. The submission that the Circular dated 16.3.88 was irrational is not correct as it has been repeatedly held by the Supreme Court that a cut off date can be fixed and it cannot be struck down even if no reason is forthcoming for fixing it in the counter affidavit vide State of Bihar and others Vs. Ramjee Prasad and others, , Dr. Ami Lal Bhat Vs. State of Rajasthan and others, etc. As observed in para 24 of the impugned judgment, the petitioners were only daily wage beldars and not regular beldars. We fully agree with the learned Single Judge that the rights of the daily wage beldars crystallized only after the directions of this Court in 1988. The submissions of the petitioners that all beldars whether regular or daily wagers, formed one composite class is not tenable. Hence, the challenge to the cut off date in the Circular dated 16.3.88 has no force.

14. We fully agree with the reasons given in the impugned judgment of learned Single Judge dated 17.9.2004 which has gone into great detail. There is no force in this appeal and it is dismissed.