

(2013) 10 DEL CK 0056

In the Delhi High Court

Case No : Writ Petition (C) No. 5448 of 2012

Anuj Kumar Verma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2013) 10 DEL CK 0056

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : M.L. Chawla and Mr. G.D. Chawla, for the Appellant; Ruchir Mishra, for R-1 and Mr. Rohit Jain, for R-2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner Mr. Anuj Kumar Verma seeks basically three reliefs. The first relief is for regularization of services with the respondent-employer, represented by respondent nos. 2 to 4, namely Central Electronics Limited. The second relief which is claimed is for continuation of services without regularization of service from 1.6.2012. The third relief which is claimed is for releasing the claims of the petitioner towards TA/DA bills raised upon the employer during the period of contractual service. The admitted fact is that petitioner was initially appointed on contractual basis for a period of one year in terms of the letter dated 19.2.2009. The relevant portion of this letter reads as under:-

No. C-5(b)/11-103

February 19, 2009

Mr. Anuj Kumar Verma

4/49, Sector-11, Block-4,

Rajender Nagar,

Sahibabad, Ghaziabad-201005(UP)

Dear Sir,

This has reference to your interview held on September 27, 2008 for considering you for engagement temporarily on contract basis.

We wish to inform you that it has been decided to engage you temporarily on contract basis for a period of one year.

1.0 You will be paid a consolidated amount of Rs. 12,030/-(Rupees Twelve thousand thirty only) per month. Income tax deduction will be made as per rules.

2.0 You will not be entitled to any other allowance/facilities as applicable to regular employees of the company such as Gratuity, Medical, Bonus & Uniform etc.

...

6.0 This engagement on contract basis can be terminated at any time without any notice and assigning reasons.

...

8.0 Your temporary engagement is subject to production/verification of the requisite certificates regarding your qualifications, experience, relieving certificate from the present employer etc.

If the above terms and conditions are acceptable to you, please communicate your acceptance in the enclosed form by March 05, 2009 and report for duty to Asstt. Gen. Manager (CP & HRD), Central Electronics Limited, 4, Industrial Area, Sahibabad-201010 (UP) on or before March 18, 2009. Failure to submit your willingness/report for duty on the stipulated date, the offer will be treated as withdrawn/cancelled without any reference to you.

Yours faithfully,

for CENTRAL ELECTRONICS LIMITED,

MANAGER (CP & HRD)

2. The contractual employment was thereafter continued from time to time and the last extension was from 29.2.2012 to 31.5.2012 in terms of the letter dated 27.2.2012 of the employer. The contractual employment has not been extended thereafter.

3. So far as the first relief of regularization is concerned, this Court cannot grant the same in view of the categorical ratio of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , which lays down the following ratio:-

(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of 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. Such temporary 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. Also the 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.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Umadevi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution.

4. Since petitioner admittedly was appointed only on contractual basis, petitioner cannot seek regularization, and this Court cannot grant regularization in view of the ratio of the judgment in the case of Umadevi (*supra*).

5. The second relief which is claimed by the petitioner is for continuation on contractual basis. This relief in my opinion cannot be granted in favour of the petitioner because whether or not a contract has to be continued, is left to the decision of the employer. The record of this case including responses which have been given to RTI queries raised by the petitioner show that other persons who are appointed before or after the petitioner, are working on different tasks and therefore, once other persons are working on different tasks, the petitioner cannot claim discrimination.

6. So far as the argument of discrimination urged on behalf of the petitioner of discrimination on account of the fact that one Mr. Deependra Satpuri has been regularized it may be stated that Article 14 of the Constitution of India is a positive concept and it cannot be invoked to enforce an illegality. The equity which the petitioner claims with Mr. Deependra Satpuri who has got regularized, cannot be claimed even if Mr. Deependra Satpuri was regularized without following the due process of law as per Umadevi's case (supra). Of course, I express no final opinion one way or the other with respect to the legality or illegality of the appointment of Mr. Deependra Satpuri being in violation of the ratio in Umadevi's case (supra) because the appointment of Mr. Deependra Satpuri is not specifically challenged before this Court. If any challenge is laid, then in such petition, the validity of appointment of Mr. Deependra Satpuri will be examined.

7. On the aspect of discrimination against petitioner of continuation of four other contractual persons namely Mr. Deepak Chauhan and others, but not the petitioner, I have already touched upon this aspect above that it is the employer which is entitled to decide the continuation of contractual employee, and no contractual employee can claim automatic right to continuation. As already stated above, as per the employer, the other persons namely Mr. Deepak Chauhan and others are working in different tasks and for which tasks their appointments have been contractually extended.

8. The third relief which is claimed by the petitioner is for settlement of his T.A./ D.A. bills given during the period of his employment with the Central Electronics Limited. In this regard, I do not find that there are sufficient particulars which are averred/mentioned in the writ petition, because to examine such claim not only the specific bills but also each amount under each subject will have to be seen. The validity of such bills will have to be seen, and, if there is any disputed fact, then, an appropriate court can determine disputed questions of fact after leading evidence. Even the relief clause in the petition does not mention any specific amount of TA/DA bills to be released in favour of the petitioner. Therefore, so far as this claim is concerned, the writ petition is disposed of with the direction that petitioner will make a detailed representation giving amounts for different periods under different heads, and this representation made by the petitioner will be adequately responded to by the employer-Central Electronics Limited by giving specific replies as to if particular TA/DA bill is payable or not

payable. The representation in this regard be made by the petitioner within two weeks and the appropriate authority of the respondents will thereafter give appropriate reply with detailed particulars and documents if so required within a period of four weeks thereafter. In view of the above, the writ petition is dismissed so far as the relief of claim of regularization or extension of contractual employment is concerned, and so far as relief of TA/DA bills is concerned, the same is disposed of with the entitlement of the petitioner to make a detailed representation which will be appropriately responded to by Central Electronics Limited-employer within a period of four weeks of the same being made. Parties are left to bear their own costs.