
(2012) 05 DEL CK 0716

In the Delhi High Court

Case No : Writ Petition (C) 2681 of 2012

Balwan Singh and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Citation : (2012) 5 AD 794 : (2012) 190 DLT 200

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Raman Oberoi, for the Appellant; Rajesh Katyal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The petitioners are aggrieved by the order dated 17.02.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 473/2010. Before the Tribunal, the petitioners herein and some others had filed the said original application seeking a direction being issued to the respondents for regularization of their services. The petitioners were appointed as casual workers/labourers on different dates between 1998-2000. They were working with the respondents in different offices under the Ministry of Home Affairs at Delhi. By virtue of the impugned order, the Tribunal held that the petitioners could not seek regularization on the strength of the Supreme Court decision in the case of the Secretary, State of Karnataka and Others Vs. Umadevi and Others, inasmuch as the said relief granted by the Supreme Court was one-time measure and was subject to the condition that the persons who were working as casual workers should have been appointed against sanctioned posts and, secondly, that they should have completed 10 years of continuous service as on 10.04.2006 i.e., the date of the judgment decision in Umadevi (supra).

2. It is an admitted position that none of the petitioners herein had 10 years of continuous service as on 10.04.2006. Consequently, they could not have had the benefit of the decision in Umadevi (supra).

3. The learned counsel for the petitioners drew our attention to another Supreme Court decision namely *State of Karnataka and Others Vs. M.L. Kesari and Others*, She submitted that the directions given by the Supreme Court in *Umadevi* (supra) have been "liberalized" and that the petitioners herein would fall within those "liberalized" directions. Unfortunately, for the petitioners, on going through the said decision in *M.L. Kesari* (supra), we do not find any such "liberalization". The Supreme Court in *M.L. Kesari* (supra) observed as under:-

"Umadevi casts a duty upon the Government or instrumentality concerned, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or Tribunals, as a onetime measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10-4-2006).

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

At the end of six months from the date of decision in *Umadevi*, cases of several daily-wage/ad hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some Government departments or instrumentalities understood the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in Courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in *Umadevi*, will not lose their right to be considered for regularisation, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in Para 53 of *Umadevi* has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of Courts or Tribunals. If any employer had held the one-time exercise in terms of Para 53 of *Umadevi*, but did not consider the cases of some employees who were entitled to the benefit of Para 53 of *Umadevi*, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of *Umadevi*, are so considered"

(Underlining added)

4. It is apparent that the Supreme Court in *M.L. Kesari* (supra), recognized that

the one-time exercise to consider all daily wage/ad hoc/casual employees has to be done in the context of the crucial date i.e., 10.04.2006. Furthermore, what has to be seen is as to whether those persons had put in 10 years of continuous service or not on that date. That stipulation has not been altered or modified in any manner by the Supreme Court in M.L. Kesari (supra).

5. Unless the petitioners had completed 10 years of continuous service as on 10.04.2006, they cannot take advantage of the one-time measure specified in Uma Devi (supra). As such, the decision of the Tribunal cannot be faulted.

6. The learned counsel for the petitioner has also sought to raise the plea that the minimum pay in the scale of Group "D" regular employees is not being paid to the petitioners. But, this plea had not been taken by the petitioners in the original application and, therefore, we are not examining the same. It is open to the petitioners to take recourse to such remedies as may be available to them under law insofar as this aspect is concerned. However, as far as this petition is concerned, the petitioners cannot be permitted to raise this plea at this stage, not having raised it before the Tribunal. The writ petition is dismissed. There shall be no orders as to costs.