
(2006) 12 DEL CK 0108
In the Delhi High Court
Case No : WP (C) No. 4440 of 1999

Delhi Development Authority	Vs	APPELLANT
The Presiding Officer, Industrial Tribunal No. 1 and Others		RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 12 DEL CK 0108

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Arun Birbal, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of the award dated 11.11.98 passed by the Industrial Tribunal No. 1 in ID No. 123/99 whereby the the Tribunal directed the petitioner to regularize the services of the respondents/workmen from the date of their initial appointment and to pay them arrears of difference in wages of regular employee and daily wager from the date of their initial appointment with all consequential benefits.

2. The respondents were muster roll/daily wages employees who were engaged from time to time. The management regularized their services as and when vacancies arose. The respondents were appointed in the year 1982-83 and their services were regularized as per policy in September, 1989. However, they raised an industrial dispute that their services be regularized from the date of inception and they should be given full benefits from the date of their ad hoc/daily wage appointment on the ground that they were doing the same work and having same qualifications. The Tribunal allowed their claim. The petitioners submitted that the workmen could not be regularized from the date of their inception because there was no vacancy available at that time and their appointment was not in accordance with the statutory rules and regulations. The other ground taken is that the dispute was not validly espoused as no trade union espoused

their cause and the workmen in their individual capacity raised the dispute.

3. In the counter affidavit, the respondent have taken the stand that no substantial question of law arose in the writ petition to be decided by this Court. All the workmen were working as technical supervisors and they had already been regularized from different dates. They all possessed requisite qualifications and it was obligatory on the petitioner to regularize them and give them equal pay to that of regular employees.

4. I consider that the award passed by the Labour Court is contrary to law laid down by the Supreme Court. In *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, Supreme Court observed that the State is controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The courts cannot impose on the State a financial burden of this nature by insisting on regularization or permanence in employment of those who are employed temporarily and are not needed permanently or regularly. The burden may become so heavy by such directions that the undertaking itself may collapse under its own weight. Similarly, the Supreme Court also held that a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It was also 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 employee who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, 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 the court, which was described as "litigious employment" , 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 maybe 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 the affairs of the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the

person concerned 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. 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. 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 or casually, would not be getting even that employment when securing of such employment brings at least some succour 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. The State should not be allowed to debar from normal rule and indulge in temporary employment on permanent basis. It is not the rule of the Court to ignore them and encourage or approve appointments made or encroachment given outside the constitutional scheme. Approving all such acts result in depriving many of the opportunities to compete in public employment. The appointments made otherwise than by the recruitment process of selection, should not be allowed to become the order of the day. Such appointments are contrary to the constitutional scheme of appointment. The Supreme Court further observed that the person who accepts engagement, temporary or casual in nature are well aware of the nature of their appointment. Such workmen accept the employment with open eyes. Merely because they were not in position to bargain, would not be a ground to jettison the constitutional scheme of appointment and to perpetuate illegalities. Giving directions of regularization or to be continued permanent by the Court, would become another mode of public appointment, which is not permissible. The persons who got employment without following regular procedure or through back door or on daily wages, cannot be directed to be regularized and regularization cannot be made as a mode of recruitment. Merely because a temporarily employee or casual or daily wages worker has continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance.

5. It is undisputed that the respondents were engaged as daily wager employees on ad hoc basis to meet the exigencies of service. They were regularized by the petitioner under a scheme as and when the posts arose. They could not claim regularization from the date of their inception and the order of the Tribunal per se is perverse. The Tribunal observations of "equal pay for equal work" are also contrary to law. Daily wagers/ad hoc employees cannot be equated with regular employees. "Equal pay for equal work" is not the principle to be applied in

abstract. Daily wagers cannot claim more than what has been sanctioned to engage a daily wager, who joins on the basis of sanction of funds. He knows that he is being engaged at a particular pay, for a particular period. He cannot claim more than what has been sanctioned to engage him. In *State of Haryana Vs. Jasmer Singh and others*, , the Supreme Court observed as under:

The respondents, Therefore, in the present appeals who are employed on daily wages cannot be treated as on a par with persons in regular service of the State of Haryana holding similar posts. Daily-rated workers are not required to possess the qualifications prescribed for regular workers, nor do they have to fulfill the requirement relating to age at the time of recruitment. They are not selected in the manner in which regular employees are selected. In other words the requirements for selection are not as rigorous. There are also other provisions relating to regular service such as the liability of a member of the service to be transferred, and his being subject to the disciplinary jurisdiction of the authorities as prescribed, which the daily-rated workmen are not subjected to. They cannot, Therefore, be equated with regular workmen for the purposes for their wages. Nor can they claim the minimum of the regular pay scale of the regularly employed.

6. Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, has specifically held that all decisions which run counter to the principle settled in *Uma Devi's case (supra)* or directions runs counter to *Uma Devi's case(supra)* would stand denuded of their status as precedent. Thus, *Uma Devi's case(supra)* is the law which is applicable in all such cases.

7. In view of my foregoing discussion, I consider that the order of the Tribunal is perverse and is liable to be set aside. Same is hereby set aside. The writ petition is allowed. No orders as to costs.