

(2013) 01 DEL CK 0106
In the Delhi High Court
Case No : Writ Petition (C) 8730-31 of 2005

Dinesh Kumar and Another	Vs	APPELLANT
Indian Airlines Ltd. and Others		RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0106

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Surat Singh with Mr. Bhagwan Singh, for the Appellant; Lalit Bhasin, Advocate with Ms. R.D. Dhingra, Advocate and Ms. Bhavna Dhami, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P.(C) No. 8730-31/2005 and C.M. No. 6558/2005 (stay)

1. In the writ petition, the following reliefs are claimed:-

(a) issue a Writ of mandamus directing the respondents to regularize the services of the petitioners on the post of typist as the petitioners are continuously working since 1998-2000 and five permanent vacancies of typist are available with the respondents from back date and with all consequential benefits.

(b) pass any other Order which this Hon"ble Court may deem fit and proper in the interest of justice.

In the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , the Supreme Court has laid 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 Uma Devi 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.

2. Counsel for the petitioners has failed to point out to me any averment in the writ petition as to the existence of sanctioned posts as on the date in which the petitioners were employed. The counsel for the petitioners has also not shown to me any averment in the writ petition that within the sanctioned posts as

available there were specific vacancies. Not only are these two crucial aspects missing in the present case, in the case of Umadevi (supra) the Supreme Court has said that the issue of regularization of irregularly recruited persons who are qualified for vacancies available against sanctioned posts can only be considered for regularization provided such employees have been working for 10 years at least on the date when judgment in case of Umadevi (supra) was passed. Admittedly, the judgment in case of Umadevi (supra) was passed in the year 2006 and the petitioners have been employed from the year 1998 to 2000 i.e. 10 years had not expired when judgment in Umadevi's case (supra) was passed.

3. In view of the above, I do not find that the petitioners are entitled to any reliefs in the present writ petition because grant of reliefs by this Court will go against the direct ratio of the Supreme Court in the case of Umadevi (supra). Accordingly, the writ petition is dismissed, leaving the parties to bear their own costs.