
(2000) 01 DEL CK 0036
In the Delhi High Court
Case No : CWP No. 773 of 1999

Diwaker Sharma

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 14-01-2000

Acts Referred:

Citation : (2000) 2 AD 184

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. A.K. Tripathi, for the Appellant;

Judgement

A.K. Sikri, J.—This is the second round of litigation preferred by the petitioner. Petitioner was engaged as a Clerk with Respondent No. 2, namely, Deshbandhu College, on ad hoc basis w.e.f. 4.9.1992. Thereafter, he was given ad hoc appointment as Junior Assistant-cum-Typist (JACT) on 5.1.1993. This ad hoc appointment was for limited period of four months, which was extended from time to time. This extension continued for few years presumably for the reason that no steps were taken to fill-up the post on regular basis. During this period a number of representations were made by Karamchari Union of the College requesting that petitioner be regularised. However, on 1.9.98 petitioner received a letter dated 17.8.98 whereby he was called for test/interview on 4.9.98 along with about 700 persons. This step was taken to fill-up the post for regular post. On 3.9.98 petitioner filed CWP No. 4497/98 in this Court which was disposed of on 16.9.98 when following order was passed :

"Counsel for the petitioner has contended in the writ petition that as he was working on ad hoc basis he has got a right to be regularised in the service. In this connection petitioner has cited State of Haryana & Others Vs. Piara Singh & Others 1992 SLJ 456 (SC).

I am afraid that the case cited by the learned counsel for the petitioner is of no help to him. A person, who has been working on temporary or ad hoc basis, may

have a preferential right for consideration for selection but in view of the recruitment rules of the respondent straightway petitioner's services cannot be regularised on the basis of ad hoc service.

Dismissed.

However, liberty is granted to the petitioner to move this court in case he is aggrieved after the selection is made."

2. Thereafter, the services of the petitioner were terminated by letter dated 13.1.99 w.e.f. 16.1.99. It seems that this letter addressed to the petitioner was not received by the petitioner and, Therefore, it was delivered back to the College. Accordingly, Respondent No. 2 College wrote another letter dated 28.1.99 referring to Office Letter dated 13.1.99 terminating the services of the petitioner and requesting him to handover the charge immediately. On receipt of this letter petitioner filed this petition challenging his termination and has made the following prayers :

"It is, Therefore, prayed that the Hon"ble Lordships may kindly be pleased to issue writ of mandamus/certiorari or any other appropriate Writ, deem fit and proper by the Hon"ble Lordships, thereby directing the respondent No. 1 & 2 to consider the petitioner on preferential basis for the regularisation/absorption of the post of his services for the post of cashier by giving proper weightage to the long more than 6 years of sincere and satisfactory services rendered by the petitioner, his service records, qualifications as compared to outside candidates and to regularise the petitioner for regular post in the office of respondent No. 2 by counting the services rendered so far in the interest of justice and to quash the impugned letter/order dated 28.1.1999 and letter dated 13.1.1999 referred therein with costs.

Any other order/direction/relief the Hon"ble Lordship deems fit and proper may also be granted in favor of the petitioner in the interest of justice".

3. Although respondents were served but nobody put an appearance and in these circumstances petitioner only was heard and the judgment reserved.

4. The main thrust of the petition as well as arguments addressed by counsel for the petitioner was that since the petitioner had rendered uninterrupted and continued service for number of years and in any case more than 206 days in every succeeding year it has ripened into grant of regularisation of his services and instead of regularising the services the respondents have terminated his services. It is also stated that petitioner has preferential right to be regularised and he has attained the age of 34 years and in case he is not selected on preferential basis he shall stand nowhere as he has already become barred by age from Government employment. The termination is challenged also on the ground that such a termination is contrary to the statement made by respondent-College in CWP Nos. 2298/97 and 1710/97 which were filed by certain ad hoc employees and statement was made there that services of the petitioner shall

not be terminated.

5. The sequence of the events narrated above would show that there is not much change in the position which was prevailing as on 16.9.98 when the writ petition of the petitioner was disposed of by this Court. The order dated 16.9.98 passed in earlier CWP No. 4497/98 is already reproduced above. Petitioner had at that time also rendered number of years of service on the basis of which he asserted that he has got right to be regularised. This prayer of the petitioner was rejected by this Court holding that petitioner may have preferential right for consideration for selection but in view of the fact that such appointments are to be made as per statutory recruitment rules of the respondent petitioner's services cannot be regularised straightway on the basis of such ad hoc service. Liberty was granted to him to move this Court in case he is aggrieved after selection is made.

6. It is clear that the post was sought to be filled on regular basis for which petitioner appeared for typing test and interview on 4.9.98 and since he was not selected his services were terminated. Although petitioner has not annexed copy of termination letter dated 13.1.99 and respondents have also not appeared and filed any counter-affidavit, Therefore, one cannot precisely state as to what is the reason for termination of petitioner services. Fact remains that the services are terminated after the aforesaid selection from which one can infer that petitioner may not have been selected for the post on regular basis and after the person selected on regular basis joined the service, petitioner's services were terminated. In the order passed in earlier petition, petitioner was given liberty to approach the court again in case he felt aggrieved after selection is made. However, in the present petition, the petitioner has not challenged the mode of selection not has stated as to who is selected on regular basis. His only grievance is that in view of his long and unblemished service he should have been given preferential right to be regularised. Copy of the recruitment rules for the post of JACT have also not been placed on record. There are no allegations of any mala fide against respondent No. 2 in making the selection and in fact as observed above selection process is not at all challenged.

7. An ad hoc employee has a right to be considered for the post when it is to be filled up on regular basis in accordance with the rules. Petitioner was duly considered. If he is not selected and no fault in the selection process is pointed out, petitioner cannot make grievance about his nonelection .

8. Counsel for the petitioner relied upon judgment of Supreme Court in the case of Arun Kumar Rout and Others Vs. State of Bihar and Others, to contend that the daily wagers who had been working for long had preferential right to be considered for appointment on regular basis. However, perusal of the said judgment would show that no such dicta is laid down in the aforesaid judgment.

9. That was a case where daily wagers were appointed in 1980 and were regularised on 10.3.1989 on the recommendations of Appointment Committee. However, after regularisation there services were terminated after issuing show

cause notice on the ground that their initial appointment as daily wagers was irregular inasmuch as at the time of initial appointment no advertisement had been given and their names were also not sponsored by Employment Exchange. However, Supreme Court found that there was no proof of any fraud by those appellants and in view of the fact that they had worked for such a long period and in fact even got regular appointment also on the recommendations of Appointment Committee, they deserved a sympathetic treatment and certain directions were given, namely, 50 % of the posts to be filled by appointees on merits and remaining 50 % appointees allowed to compete with general candidates giving 25 % marks of experience. Thus these directions were given in the peculiar circumstances of the case and have no application on the facts of the present case.

10. Counsel for the petitioner also relied upon the Judgment of Supreme Court in the case of Secretary, H.S.E.B Vs. Suresh and Others etc. etc., and contended that he got right to be regularised after completion of 240 days of service. That case related to Contract Labour under the Contract Labour (Regulation and Abolition) Act, 1970 and is again distinguishable. On the other hand there are number of judgments pronounced by Supreme Court wherein it is held that the statutory bodies have to fill up the post, on regular basis, after following the statutory recruitment rules and even long period of service as ad hoc employee does not confer any right of regularisation. As already noticed above, petitioner was duly considered for the post of JACT as he appeared in the typing test and interview on 4.9.98 and he has not challenged the selection process but is only claiming preferential right to be absorbed on regular basis. However, if there is any vacancy arises on regular basis in future, petitioners may be considered against the said post ignoring the age bar by giving him relaxation in age for the period he served with the respondent.

11. In view of the above, this petition is without any merit and is, accordingly, dismissed. No order as to costs.