

**(2013) 11 DEL CK 0283**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 4519 of 2008

Dr. (Mrs.) Anita Mehrotra

APPELLANT

Vs

Miranda House and Others

RESPONDENT

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**Date of Decision :** 21-11-2013

**Acts Referred:**

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

**Citation :** (2013) 11 DEL CK 0283

**Hon'ble Judges :** Valmiki J Mehta, J

**Bench :** Single Bench

**Advocate :** Nawab Singh Jaglan, for the Appellant; Maninder Acharya with Ms. Beenashaw Soni, Advocate and Mr. Aakash Yadav, Advocate for respondent Nos. 1, 4 and 5 and Mr. Amit Khemka, Advocate with Mr. Rishi Sehgal, Advocate, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Valmiki J Mehta, J.—I may note that there were two petitioners in this writ petition. Petitioner no. 2 had withdrawn her petition and the case is now being argued only by petitioner no. 1 for the reliefs claimed in the writ petition. Petitioners were appointed as ad hoc Lecturers with the respondent no. 1/ Miranda House. Petitioners participated in the selection process for appointment to permanent posts as per the advertisement dated 29.5.2007. Petitioners however were not successful as other candidates were selected by the Selection Committee. This writ petition is therefore filed seeking relief of regularization and for challenging the Selection Committee's decision dated 30.5.2008 not selecting the petitioner no. 1.

2. So far as the issue of regularization is concerned, since the petitioners were admittedly ad hoc employees, and they were not appointed against permanent vacancies for a regular employment, in view of the ratio of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , petitioners cannot be

regularized. In the case of Umadevi (supra) the following ratio has been laid down:-

(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.

3. Since the appointment of the petitioners was only as ad hoc Lecturers, and was not regular employment against any sanctioned posts, relief of regularization therefore cannot be granted.

4. The only issue is that whether petitioners can succeed in challenging the decision of the Selection Committee dated 30.5.2008. In this regard, I may state that Courts do not substitute their opinions taken by the members of the Selection Committee, more so because Courts are ill-equipped to do so, and certain decisions are best left for experts in the field. Decision of the Selection Committee can be challenged only in extremely limited circumstances of ex facie perversity or violation of any rules or gross malafides which violates the selection proceedings.

5. In view of the aforesaid requirements of law for challenging the decision of the Selection Committee, I put it to the counsel for the petitioner no. 1 that what are the detailed averments for challenging the decision of the Selection Committee, and to which counsel for the petitioner no. 1 could refer to only ground (A) of the writ petition and which reads as under:-

A. Because the impugned Minutes of the meeting/decision taken on 30 May 2008 is illegal, arbitrary and malafide.

6. In my opinion, the aforesaid two lines stated in ground (A) are quite clearly grossly insufficient to make out any case, much less a legal case, for questioning the decision of the Selection Committee dated 30.5.2008. A self-serving statement or ipse dixit of the petitioners cannot mean that the decision of the Selection Committee would become illegal or malafide. Also, simply because one member of the Selection Committee, out of a total of seven members, has filed an affidavit in this Court stating that procedure was not fair, cannot make the procedure of the Selection Committee as unfair because Selection Committee's decision cannot be disputed by only one member of the seven members committee. Unless there is law to the contrary, and no such law has been pointed out to me, the decision of the majority will prevail, and in fact I may note that learned senior counsel appearing for respondent nos. 1, 4 and 5 state that the respondent no. 2-Ms. Nisha Bala Tyagi was member of the Selection Committee (and who has filed an affidavit in support of the petitioners), participated in the meeting but when her turn came to sign the minutes, she just went away. At best therefore it would mean that there is objection of only one member of the committee, and the same cannot mean that decision of committee of majority of six other members would stand superseded. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.