

(2013) 04 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) No. 2574 of 2010 and CMs 5134/10, 8525/11 and 7028/12

Indu Munshi and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

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

Citation : (2013) 04 DEL CK 0171

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : S.K. Ambardar, for the Appellant; Jatan Singh with Mr. Soayib Qureshi for R-1, Ms. Purnima Maheshwari, for R-2 and Mr. Sudhir Kathpalia for Ms. Suparna Srivastava, for MCD, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition has been filed by fifteen petitioners seeking the reliefs of regularization and equal pay for equal work. It is not disputed, and the admitted position is that the petitioners have been employed on contractual basis from time to time. Contractual appointees cannot be regularized in view of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The following is the ratio which has been laid down by the Supreme Court in the case of Umadevi (supra):

(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. A reference to the aforesaid ratio shows that there is no legitimate expectation of contractual employees or work charged employees to get regularization. The Supreme Court has categorically observed that people who take employment with open eyes for a contractual period or for a specific project cannot claim regularization and there is no equity in their favour inasmuch as the equity is in favour of millions who have been waiting for public employment through the regular recruitment process outweighs the equities claimed by the limited number of employees.

3. In view of the fact that petitioners have not been appointed against vacancies in sanctioned posts, and the petitioners have not been appointed through a regular recruitment process for vacancies in sanctioned posts, and since the petitioners are only contractual employees, contractual employees cannot be regularized in terms of the ratio in the Umadevi's (supra) case.

4. During the course of hearing I put to counsel for the petitioner that this is a hard case and that petitioners must in fact file appropriate proceedings or appropriately approach the executive for their regularization, but the counsel for the petitioners states that the case be decided on merits. In view of the fact that Constitution Bench of the Supreme Court in the Umadevi's (supra) case has clearly said that there can be no regularization of contractual employees, I have no option but to dismiss the present petition, which is accordingly dismissed, leaving the parties to bear their own costs.