

(2020) 10 DEL CK 0173

In the Delhi High Court

Case No : Civil Writ Petition No. 7737 Of 2020

Joginder Singh

APPELLANT

Vs

Bharat Sanchar Nigam Ltd & Ors

RESPONDENT

Date of Decision : 22-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 10 DEL CK 0173

Hon'ble Judges : Siddharth Mridul, J; Talwant Singh, J

Bench : Division Bench

Advocate : Pradeep Gupta, Sameer Agrawal

Final Decision : Dismissed

Judgement

Siddharth Mridul, J

The present writ petition has been taken up for hearing by way of Video Conferencing on account of COVID-19 pandemic.

CM APPL.25520/2020 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(C) 7737/2020 & CM APPL.25519/2020 (Stay)

1. The present writ petition under Articles 226 and 227 of the Constitution of India instituted on behalf of the petitioner prays as follows:

"a. Set aside the final impugned judgment and order dated 08.07.2020 passed by the Ld. Central Administrative Tribunal, Principal Bench at New Delhi in OA No.1999/2017 and regularize the services of the petitioner on Group D posts.

b. Quash and set aside the impugned order of termination dated 23.01.2020 passed by the respondent No.3

c. Any other appropriate direction may be issued."

2. Issue notice.

3. Mr. Sameer Bansal, learned counsel appears on advance notice on behalf of Bharat Sanchar Nigam Limited accepts notice.

4. Mr. Pradeep Gupta, learned counsel appearing on behalf of the petitioner states that apart from there being errors of fact apparent on the face of the record in the impugned order dated 08.07.2020 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (for short 'learned Tribunal'), in O.A. No.1999/2017, titled as 'Joginder Singh vs. Bharat Sanchar Nigam Ltd. & Ors.', the Tribunal was also not apprised of the Hon'ble Supreme Court of India reported in (2018) 8 SCC 238, titled as 'Narendra Kumar Tiwari & Ors. vs. State of Jharkhand and in particular paragraphs 4 and 7 to 10, thereof, whereby the Hon'ble Supreme Court of India has clarified the ratio of the decisions rendered by them earlier in Secretary State of Karnataka & Ors. vs. Uma Devi & Ors, reported as (2006) 4 SCC 1 and State of Karnataka & Ors. vs. M.L. Kesari & Ors. reported as (2010) 9 SCC 247, which held as follows: -

"4. Having heard the learned counsel for the parties and having considered the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as well as the subsequent decision of this Court explaining Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] in State of Karnataka v. M.L. Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] , we are of the view that the High Court has erred in taking an impractical view of the directions in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as well as its consideration in Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] .

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7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1: 2006 SCC (L&S) 753] was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC

1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid.

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10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.

5. It is fairly conceded on behalf of the petitioner that the decision in M.L. Kesari's (supra), was never brought to the notice of the learned Tribunal at the time of adjudication of the said O.A. No.1999/2017, which has culminated in the impugned order dated 08.07.2020.

6. It is in this backdrop that, Mr. Pradeep Gupta, learned counsel for the petitioner seeks leave to withdraw this petition with liberty to approach the learned Tribunal by way of a review petition.

7. Leave and liberty granted.

8. It is also made clear that the delay in instituting the proposed review petition may be condoned by the learned Tribunal in the interest of justice and in the backdrop of the peculiar facts and circumstances of the case, as elaborated hereinabove.

9. No further directions are called for.

10. With the above directions, the petition is dismissed as withdrawn and disposed of accordingly. The pending application also stands disposed of.