

(2013) 05 DEL CK 0136
In the Delhi High Court
Case No : W.P. (C) 1481/1999

J.P. Sharma and Others

APPELLANT

Vs

Jawahar Lal Nehru University and Another

RESPONDENT

Date of Decision : 16-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0136

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—In this writ petition two basic reliefs are claimed. First is for regularization of the petitioners and second is for granting them scale of pay which is being given to Cooks and Helpers. As per the writ petition, it is not disputed that petitioners were employed on contractual basis. The issue is that can persons such as the petitioners who have not been appointed through the regular recruitment process seek regularization or claim a higher pay.

2. The Constitution Bench judgment of the Supreme Court in the case of lays 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.

3. The writ petition does not contain averments as to there existing any sanctioned post and petitioners being appointed through regular recruitment process. Counsel for respondent No. 2/UGC, in fact, states that there are no sanctioned posts with respect to Mess Managers/Advisors/Maintenance Manager in the respondent No. 1 University. Since the Constitution Bench of Supreme Court in Uma Devi's case (supra) has said that backdoor entry cannot be given to public employments inasmuch as millions are waiting for public employment through the regular recruitment process, petitioners cannot seek regularization and, therefore, this prayer of the petitioners is rejected.

4. So far as the claim of the petitioners to higher salary is concerned on the ground that Cooks and Helpers are getting higher salary, I may refer to the judgment of the Supreme Court in the case of Indian Drugs and Pharmaceuticals

Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., wherein the Supreme Court has clearly observed that it is for the employer to decide what should be the pay scale of its employees and courts cannot interfere with respect to fixation of salaries of employees. Therefore, petitioners also cannot claim higher scale of pay because it is for the employer to decide what should be the scale of pay for its employees. In view of the above, neither of the reliefs claimed by the petitioners can be granted and, therefore, the petition is dismissed, leaving the parties to bear their own costs.