

(2013) 10 DEL CK 0425

In the Delhi High Court

Case No : Writ Petition (C) No. 4071 of 2013

Kanishk Sharma and Others

APPELLANT

Vs

University Grants Commission and Others

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2013) 10 DEL CK 0425

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Surat Singh and Mr. Brajesh Kumar Sengh, for the Appellant;
Amitesh Kumar, for R-1/UGC, Mr. Roshan Lal Goel, for R-3 and Mr. A.S. Rao, Law
Officer for R-4/DMRC, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

CM No. 14422/2013 (Delay)

For the reasons stated in the application, the same is allowed and delay is condoned.

CM stands disposed of.

Review Petition No. 533/2013 (for review of the order dated 2.7.2013) & CM No. 14423/2013 (Stay)

1. This review petition is filed against the judgment dated 2.7.2013 dismissing the writ petition. For the purpose of filing the review petition, reliance is placed upon the order of a Division Bench of this Court dated 26.8.2013 passed in LPA No. 617/2013. LPA No. 617/2013 was preferred against the judgment of this Court dated 2.7.2013 dismissing the writ petition. The order of the Division Bench dated 26.8.2013 in LPA No. 617/2013 reads as under:-

CM No. 12963/2013 (Exemption)

Allowed.

CM No. 12964/2013 (delay)

For the reasons stated in the application the delay is condoned.

LPA 617/2013

1. Impugned judgment would reveal that notwithstanding various prayers made in the writ petition what was argued before the learned Single Judge as the entitlement to be regularized. Learned counsel states that notwithstanding this being the principal argument the petitioner before the Single Judge, the appellants before us, had also argued on lifting the veil and considering the matter in light of the decision in Radha Dubey's case.

2. Since the said aspect of the matter pertaining to Radha Dubey's case does not find a reflection in the impugned order and since learned counsel for the appellants states that said aspect was argued before the learned Single Judge we permit the appellants to withdraw the appeal observing that under the circumstances the correct course for the appellants would be to move an application before the learned Single Judge pertaining to the record of the Single Judge i.e. drawing attention of the learned Single Judge that the appellants have made submissions with respect to lifting the veil and the law declared in Radha Dubey's case.

3. Needless to state that such an application filed would be considered by the learned Single Judge as per law.

4. Observing as above the appeal is dismissed as not pressed.

CM No. 12962/2013 (Stay)

Dismissed as infructuous.

Dasti.

It is clear that the limited review which was submitted before the Division Bench for being filed was only and only on the basis of placing reliance upon Radha Dubey Vs. Govt. of NCT of Delhi & Ors. in C.C. No. 10388/2010 dated 16.8.2010 and the doctrine of lifting of the corporate veil.

2. A reading of the order of the Division Bench shows that the review petitioners/petitioners argued before the Division Bench that Radha Dubey's case (supra) entitles the petitioners to lift the corporate veil and claim appropriate consequential relief on the veil being lifted that petitioners were employees of UGC/respondent no. 1 and not of the private employer/respondent no. 2. No other ground was pressed for filing of the review petition.

3. No doubt the Division Bench has permitted filing of the review petition,

however, a review petition can only be filed if it is urged in the review petition that a specific ground or argument was argued but not considered at the time of passing of the judgment. It is not the case of the petitioners in the review petition that Radha Dubey's case (supra) was relied upon at the time of arguments before passing of the judgment on 2.7.2013 and which was not considered by this Court. The only argument urged before me is that Radha Dubey's case (supra) is referred to in Ground (D) of the writ petition and therefore, that aspect be now considered in view of the review petition. I am doubtful if a review petition lies merely because a ground is pleaded in the writ petition although no argument on that basis is addressed. In any case I am deciding the review petition inspite of that.

4. In order to decide the review petition, let me again set out certain facts of the case. The facts of the case are that petitioners at no point of time were ever employees of UGC. Petitioners as per their own case were appointed by respondent no. 2-M/S JMD Consultants and M/s. JMD Consultants thereafter posted them for work with UGC/respondent no. 1. Petitioners for this reason claim that the lifting of corporate veil theory be applied and petitioners instead of being treated as employees of respondent no. 2-JMD Consultants be treated as employees of respondent no. 1/UGC. As per the writ petition on succeeding in claiming lifting of the corporate veil, entitlement was then claimed to be regularized as employees of UGC/respondent no. 1. Challenge was also laid to the letter dated 31.5.2013 issued by respondent no. 2-JMD Consultants of newly posting the petitioners for working with DMRC instead of UGC. The case set up was that the impugned letter was prejudicial to the petitioners because not only the terms of service with DMRC were less favourable than UGC, respondent no. 2 was in fact asking for a bond of Rs. 25,000/-. These factual aspects are reconfirmed by me today from the counsel for the petitioners before dictation of this judgment. Therefore, in sum and substance, mainly and essentially what the petitioners claimed was that though they were formally appointed by respondent no. 2-M/s. JMD Consultants, corporate veil of JMD Consultants be lifted and petitioners should be taken as direct employees of respondent no. 1/UGC and thereafter regularized with respondent no. 1/UGC.

5. Let us now turn to the reliefs which are prayed for as per the prayer clauses in the writ petition. These reliefs read as under:-

a) Issue a writ of certiorari or any other writ of like nature declaring the letter dated 31st May 2013 and letter dated 18th June 2013 as unconstitutional and violative of fundamental rights of fairness in the matters of employment under article 14, 16, 19 & 21 of the constitution of India and quash the same.

b) Issue writ of mandamus or any other writ of like nature directing the respondents to consider the regularization of the services of the petitioners with respondent no. 1 as Lower division clerk/Peon as per the relevant law with all the consequential benefits. Petitioner no. 10, 11, 12 & 23 are still working with the respondents continuously.

c) In alternative direct the respondents to relax the upper age for applying for Lower division clerk vacancies and give the benefit of age relaxation of years served with UGC and thus render them eligible to apply for the very post on which they have been working since last several years.

d) Direct the respondents to take into consideration the past services rendered by the petitioners to UGC and thus giving them the benefit of the same is the selection process.

e) Issue writ of prohibition or any other writ of like nature restraining respondent no. 1 & 2 from terminating the services of the petitioner without due process of law.

f) Pass any other order which this Hon'ble Court may deem fit and proper to do complete justice to the matter/case.

6. Let us now consider the review petition in the light of firstly the order of the Division Bench of this Court dated 26.8.2013, secondly Radha Dubey's case (supra) which is relied upon by the petitioners and thirdly the reliefs which have been prayed for in the writ petition and which are argued that the same can be again prayed for and argued in spite of the limited review permitted by the Division Bench.

7. Straightway let us first come to the Radha Dubey's case (supra) which is relied upon by the petitioners. It may be noted that Radha Dubey's case (supra) is referred to above in the writ petition as Radha Dubey's case (supra) simplicitor without any citation being given. No citation was given because today it becomes clear that this Radha Dubey's case (supra) is not a judgment of a Supreme Court disposing of a case and laying down a ratio but the so called Radha Dubey's case (supra) is simply an order by which notice is issued in an SLP and interim orders were granted. Therefore, surely, the Radha Dubey's case (supra) is not a ratio or precedent which can be relied upon for disposal of a case. Also, the issue in the Radha Dubey's case (supra), if I can allow that as a case precedent, the same had nothing to do with lifting of corporate veil but really of observations of Supreme Court at the time of issuing notice in the SLP that contractual workers should not be continued for a long period of time by the government which is a model employer. However, it bears mention that the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , and ratio of which has been given in detail in the judgment of this Court dated 2.7.2013, has specifically and categorically observed that contractual employees irrespective of long services cannot be regularized and are not entitled to claim regularization. Supreme Court has clarified and laid down the ratio in the case of Umadevi (supra) that public employment can only take place if there is a sanctioned post, there is a vacancy in that sanctioned post, duly qualified persons are appointed against the sanctioned post and such appointment is through the regular recruitment process wherein the candidates are called through advertisement in

newspapers and/or employment exchange. The only exception created by Umadevi's case (supra) for regularization of persons was where persons had worked for 10 years prior to passing of the judgment in Umadevi's case (supra) in the year 2006 against vacancies in sanctioned post and were duly qualified only then, qua such persons State/instrumentalities of State were asked to frame schemes for regularization of this limited class of persons. Therefore, the limited exception was that those persons who had worked for 10 years with the State/instrumentality of State in the vacancies in sanctioned posts were to be regularized and no other class of persons could be regularized. Therefore, the issue of regularization was accordingly addressed and relief in this regard denied in the judgment dated 2.7.2013, and finality as regards disentitlement to regularization which was not questioned before the Division Bench in LPA No. 617/2013 and even before me today. What is really argued before me is actually arguments on Radha Dubey's case (supra) and with respect to other prayers which have been prayed for in the review petition.

8. Now coming to the issue if Radha Dubey's case (supra) can be treated as a laying down precedent with respect to lifting of corporate veil. This order issuing notice in the SLP however had nothing to do with the issue of lifting of the corporate veil. This will become clear from order issuing notice in the writ petition in Radha Dubey's case (supra) and which order reads as under:-

UPON hearing counsel the Court made the following

ORDER

Delay condoned.

Heard Shri L.N. Rao, learned senior counsel for the petitioner and perused the record.

By an order dated 12.1.1996, the petitioner was appointed as Medical Officer on contract basis for one year in the Directorate of Health Services, Government of N.C.T., Delhi.

She continued in service for next ten years without any break. However, the nature of her employment continued to be contractual. She proceeded on sanctioned leave on 3.4.2006.

At the end of sanctioned leave, she applied for extension of leave due to domestic difficulties. Her request was rejected vide letters 13.6.2006 and 31.7.2006 and she was asked to join duty. The petitioner again applied for extension of leave by stating that her widowed mother was suffering from Parkinson and there was none to look after her, but her request was rejected and the Director, Health Services, Government of N.C.T., Delhi terminated her service vide order dated 23.11.2007.

The petitioner challenged the termination of her service on the ground that the termination of her service was punitive but the Central Administrative Tribunal

and the Division Bench of the High Court dismissed the original application and the writ petition without properly appreciating the issue raised by her and without considering the important question whether the State has the power to employ a person on contract basis and continue her/him for a period of ten years.

We are prima facie of the view that appointment of a person on contract basis for an uninterrupted of a person on contract basis for an uninterrupted period of ten years amounts to exploitation. The State, as a model employer in a welfare State, is not expected to take advantage of its position and impose wholly unequitable and unreasonable condition of employment on the prospective employees, who do not have the choice but to accept the appointment on terms and conditions offered by the employer. This practice seems to be contrary to the ratio of the judgments of this Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

Issue notice to the respondents on the SLP as also on the petitioner's prayer for interim relief, returnable in 16 weeks. Dasti, in addition, is permitted.

Having regard to the peculiar facts of the case, we deem it proper to direct the respondents, by an interim order, to take the petitioner back in service.

A copy of this order be served upon the respondents along with the notice.

9. The doctrine of lifting of corporate veil is employed for the purpose of preventing a fraud by the corporate entity. In the present case, I do not understand that how any case of fraud can be set up for lifting of the corporate veil of the JMD Consultants by effectively making as the petitioners want to argue that M/s. JMD Consultants/respondent no. 2 is an alter-ego of a government organization namely UGC. I do not think that in law it is permissible for this Court to hold that JMD Consultants-respondent no. 2, a private organization which employs people and further places them with entities for employment as placement agency, can be treated as an alter ego of UGC. Therefore, the doctrine of corporate veil has no application in the facts of the present case because there is no governmental ownership of JMD Consultants.

10. Even assuming for the sake of arguments, that corporate veil can be pierced and respondent no. 2 can be taken to be an alter ego of respondent no. 1, yet, the same will at best mean that petitioners would claim for being taken to be treated as employees of respondent no. 1, yet, this argument actually was only with respect to the issue of seeking regularization, and which regularization cannot be granted in view of Umadevi's case(supra).

11. So far as the various other reliefs which were prayed for in the writ petition is concerned, and which are now once again argued before me for rearguing the petition as a whole which was disposed of by the judgment dated 2.7.2013, it must be noted that before the Division Bench no argument was urged that that various other reliefs be also allowed to be urged before this Court in terms of the

review petition, and which prayers are in addition to the argument of lifting of corporate veil relying upon Radha Dubey's case (supra). The order of the Division Bench dated 26.8.2013 and which has been reproduced above, only shows that the appeal was withdrawn with liberty to draw the attention of this Court to Radha Dubey's case (supra) and nothing more. Therefore, I cannot permit petitioners to re-argue their whole case as regards various other reliefs.

12. I may also state that in fact and reality petitioners were always the employees of a private entity namely respondent no. 2/JMD Consultants. As against the private employer no writ petition lies. There cannot be allegation of violation of a fundamental right against a private entity. In extremely limited circumstances Courts do entertain writ petitions against private entities where blatant violations of legal provisions contained in important welfare legislation are shown to be violated, however, otherwise no writ petition lies against a private entity. Therefore, the claim of the petitioners being re-posted by respondent no. 2 from respondent no. 1/UGC to DMRC and other reliefs against respondent no. 2 even if allowed to be argued cannot be the basis for invoking writ jurisdiction of this Court under Article 226 of the Constitution of India and granting of reliefs against respondent no. 2. This aspect was considered and rejected as per para 7 of the judgment dated 2.7.2013

13. There is a disturbing tendency of certain litigants in this country of never being satisfied. I can say so with respect to the Supreme Court judgment or proceedings disposing of a case are treated as final only because there is no further Court of appeal thereafter, otherwise surely if there were further Courts, certain litigants would want to continue to keep on approaching not one Court above the Supreme Court but many such Courts if they existed. There has to be a limit to unnecessary litigation. Firstly, the argument on the basis of Radha Dubey's case (supra) is a most misconceived argument because Radha Dubey's case (supra) as already stated is only and only an order issuing notice in an SLP. Not only in the order only notice was being issued in the SLP, however with all due respect the observations of the Division Bench, observations with respect to regularization of contractual employees, except as per exception in para 53 of Umadevi's case (supra) will fall foul of the Constitution Bench judgment in Umadevi's case (supra). In fact after Umadevi's case (supra) a Division Bench of two judges in the case of U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, sought to take a different path on the ground of equity, however that judgment was specifically overruled by a Division Bench of three judges in the case of Official Liquidator Vs. Dayanand and Others, stating that the ratio of Umadevi's case (supra) is inviolable.

14. In view of the above, neither any of the reliefs as prayed for in the writ petition could have been granted for the reasons already contained in the judgment dated 2.7.2013, but they also cannot be granted as prayed in the present review petition. Giving the benefit of lifting of the corporate veil doctrine was discussed and denied in para 8 of the judgment dated 2.7.2013. The review

petition being wholly without any merit is accordingly dismissed with costs of Rs. 50,000/-. Costs can be recovered by respondent no. 1 in accordance with law.