
(2013) 07 DEL CK 0079

In the Delhi High Court

Case No : Writ Petition (C) No. 8462 of 2008

Khem Verma and Another

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

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

Citation : (2013) 3 LLJ 612

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : N.K. Khetrapal and Mr. S.N. Mathur, for the Appellant; Mohinder J.S. Rupal, Advocate for Respondent No. 1 and Ms. Mamta Tiwari, Advocate for Ms. Amitesh Kumar, Advocate for UGC, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioners by means of this writ petition seek regularization of the services with the respondent No. 1/University of Delhi. Petitioners were appointed as Technical Assistant and Office Attendant in terms of selection letters dated 19.5.1999. When we refer to these letters, admittedly, these letters show that the appointments of the petitioners were as temporary employees.

2. No doubt, the appointment of the petitioners continued after the original period of about 3 years because the plan/scheme/project under which the petitioners were appointed, continued as per the plan of the University Grants Commission (UGC), however, petitioners' services came to an end on account of coming to an end of the plan/scheme/project. The respondent no. 1 in the counter affidavit has specifically stated that petitioners were working only on contract basis and their employment was till the duration of the plan/scheme/project. It is stated that there were no sanctioned posts against which petitioners were appointed as they seek to be regularized and there is no scheme of regularization of the petitioners. It is accordingly argued by the respondents that petitioners cannot be regularized inasmuch as they were only appointees till the

scheme lasts.

3. It may be noted that during the pendency of the petition since the scheme ended, hence, petitioners' services were not renewed. The issue of regularization of the employees with Union of India or State Governments or instrumentalities of State has now been conclusively decided by the Constitution Bench of the Supreme Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, The Supreme Court in the case of *Umadevi (supra)* has laid 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.

4. Since in the present case, there are no averments made by the petitioners of vacancies existing in existing sanctioned posts, the issue in the present case is squarely covered by the judgment of the Constitution Bench of the Supreme Court in the case Secretary, State of Karnataka & Ors Vs. Umadevi & Ors (supra). The respondent No. 1 in fact categorically has stated that petitioners were only temporary or contractual employees till the continuation of plan/scheme/project, and therefore, there is no question of regularization. In view of the ratio laid down in Umadevi's case (supra), petitioners cannot be regularized. The writ petition is, therefore, dismissed, leaving the parties to bear their own costs.