

(2013) 11 DEL CK 0385

In the Delhi High Court

Case No : Writ Petition (C) No. 1875 of 2000

K.S. Laxminarayan Shastry

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

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

Citation : (2013) 11 DEL CK 0385

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Petitioner by this writ petition impugns the order of the employer/respondent no. 2 dated 16.9.1999 whereby a lower wage was directed to be payable to the petitioner who was a daily wager/casual labourer. Though the writ petition contains many reliefs, the sum and substance of the reliefs is basically the claim of the petitioner for regularisation from a casual/daily wage labourer to a regular employee.

The Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, 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.

2. In view of above, the relief claimed of regularization cannot be granted to the petitioner who is only a daily wager/casual labourer. So far as the claim for higher wages is concerned, it is the legal right and entitlement of an employer to fix any particular remuneration payable to any daily wager/casual labourer, and such persons cannot claim any particular higher monetary emoluments inasmuch as there is no such law to this effect giving a legal right or cause of action for higher wage. It is not the case of the petitioner that he is not being paid a minimum wage or that a particular law entitles a particular higher wage which is denied to him by the employer. In view of the above, there is no merit in the petition and petitioner neither can be granted regularization nor a particular pay/wage/monetary emoluments. The writ petition is therefore dismissed, leaving the

parties to bear their own costs.