

(2006) 11 DEL CK 0199
In the Delhi High Court
Case No : LPA 2028 and 2029 of 2006

Naval Kishor Nagar and Another	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (2006) 11 DEL CK 0199

Hon'ble Judges : Mukul Mudgal, J;J.P. Singh, J

Bench : Division Bench

Advocate : Amber Jain, for Asha Jain Madan, for the Appellant; V.N. Kaura, Rakesh Sawhney and Paramjeet Benipal, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Singh, J.—This Letters Patent Appeal is directed against the order dated 11.10.2006 passed by the learned Single Judge dismissing the writ petition filed by the appellants inter alias on the ground that the appellants were ad-hoc employees and in view of judgment in Secretary, State of Karnataka and Others Vs. Umadevi and Others, could not be regularized as they were not appointed by the usual mode of recruitment. In view of this, the standing orders on which the appellants had relied upon were held to be of no help to the appellants.

2. The contentions on behalf of the appellants are that they are ex- servicemen and that they had joined the respondent ONGC as Telecommunication Operators ostensibly through a contractor but thereafter they were given ad-hoc appointments for successive period of two months each of which were extended from time to time. Further, the said posts were reserved for ex-servicemen and they were thus eligible to be appointed. The work was of permanent and of a perennial nature and their appointments were not illegal or dehors the Rules.

3. While issuing notice in the appeal we had referred to the judgments titled Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others, cited on

behalf of the appellants and the judgment titled Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, cited on behalf of the respondent. The relevant passage relied upon by counsel read as follows:

Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey,

18. The said decision applies on all fours to the facts of this case. In Mahendra L. Jain this Court has categorically held that the Standing Orders governing the terms and conditions of service must be read subject to the constitutional and statutory limitations for the purpose of appointment both as a permanent employee or as a temporary employee. An appointment to the post of a temporary employee can be made where the work is essentially of temporary nature. In a case where there existed a vacancy, the same was required to be filled up by resorting to the procedures known to law, i.e., upon fulfilling the constitutional requirements as also the provisions contained in the 1976 Regulations. No finding of fact has been arrived at that before the respondent was appointed, the constitutional and statutory requirements were complied with.

Inderpreet Singh Kahlon and Others Vs. State of Punjab and Others,

40. We at the outset would furthermore notice that having regard to the submissions made before us by Mr. Dwivedi and Mr. Rao that the service of the appellants before us were terminated not in terms of the rules but in view of the commission of illegality in the selection process involved, we need not consider the applicability of the relevant provisions of the statutes as also the effect of the provisions of Article 311 of the Constitution of India. An appointment made in violation of Articles 14 and 16 of the Constitution of India would be void. It would be a nullity. See Secretary, State of Karnataka and Others Vs. Umadevi and Others, But before such a finding can be arrived at the appointing authority must take into consideration the foundational facts. Only when such foundational facts are established, the legal principles can be applied.

41. If the services of the appointees who had put in few years of service were terminated; compliance of three principles at the hands of the State was imperative, viz., to establish (1) Satisfaction in regard to the sufficiency of the materials collected so as to enable the State to arrive at its satisfaction that the selection process was tainted; (2) determine the question that the illegalities committed go to the root of the matter which vitiate the entire selection process. Such satisfaction as also the sufficiency of materials were required to be gathered by reason of a thorough investigation in a fair and transparent manner; (3) Whether the sufficient material present enabled the State to arrive at satisfaction that the officers in majority have been found to be part of the fraudulent purpose or the system itself was corrupt.

4. A perusal of the above judgments reveals that even where regularization cannot be granted as per the mandate of Uma Devi's judgment (supra), the

consideration as per para 40 in Inderpreet Kahlon's judgment extracted above should be accorded. The counsel for the respondent has been unable to show that the consideration required by Inderpreet Kahlon's judgment (supra) has been accorded by it.

5. There is also a prayer on behalf of the appellants that in any case the appellants be given liberty to move the labour court with interim protection and that even if their services may not be liable to be regularized, their services should only be terminated in accordance with law and they be given preference in future appointments.

6. Admit. List on 31st January, 2007 for hearing. Till the next date of hearing the status quo ordered in favor of the appellants passed by the learned Single Judge and continued by this Court on 18.10.2006 and 2.11.2006 shall continue.