
(2013) 07 DEL CK 0256

In the Delhi High Court

Case No : Writ Petition (C) No. 5374 of 1998

Naveen Dobhal and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2013) 07 DEL CK 0256

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.S. Tuisen Shimray, for Ms. Saroj Bidawat, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—In this writ petitions petitioners who were engaged to work for 10 days in a month on shift basis as Video Editors seek regularization in their posts. The issue in the present case is squarely covered by the judgment of the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, In the case of Umadevi (supra) the Supreme Court has held that casual employees cannot be regularized, unless there are vacancies in sanctioned posts which are filled in through the regular recruitment process including of insertion of advertisement in newspaper. 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.

2. In view of the above, prayer in the writ petition of regularization cannot be granted. Other consequential reliefs also therefore cannot be granted. The writ petition is accordingly dismissed in view of the judgment of the Supreme Court in the case of Umadevi (supra), leaving the parties to bear their own costs.