

(2019) 11 DEL CK 0103

In the Delhi High Court

Case No : Civil Writ Petition No. 10596 Of 2015, Civil Miscellaneous Application No. 26958 Of 2015, 54270 Of 2018

Poonam Sudan And Anr

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 11 DEL CK 0103

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : T.P. Singh, R. Mishra, M.K. Tiwari, Sanjiv Kr. Saxena, Abhishek Rana, R. Ramachandran

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. The two Petitioners, Ms Poonam Sudan and Ms Shama Rani, have in this petition, challenged an order dated 15th September, 2015 passed by the Central Administrative Tribunal ("CAT"), Principal Bench, dismissing their OA No.2173 of 2013, in which they prayed for directions to the Respondents i.e. the Nehru Yuva Kendra Sangathan ("NYKS") (Respondent No.2); the Ministry of Youth Affairs and Sports ("MYAS"), Government of India (Respondent No.1); the Department of Personnel & Training ("DoPT") and the Ministry of Law & Justice and the Ministry of Finance (Respondent Nos. 3 to 5), to regularize their services.

2. The case of the two Petitioners is that they have been engaged on contractual basis after following the due process of recruitment by calling for applications through the employment exchange. After conducting skill test, interview etc., the Petitioner No.1 was employed to work against a post comparable to "Assistant"; and the Petitioner No.2 as "stenographer", on contractual basis. They state that as of the date of the filing of the present petition in 2015, they have been

working for 14 continuous years. The work performed by them is equivalent to the work by other regular employees. Both the Petitioner claimed that NYKS had vacant sanctioned posts at the level of the posts against which the Petitioners had been employed.

3. The Board of Governors ("BoG") of the NYKS at its meeting held on 2nd February 2010, had taken a decision directing the Director General ("DG"), NYKS to examine the issue of regularization of the services of the Petitioners and recommend the process for regularization/ confirmation of their services in NYKS, by identifying suitable positions/ posts for that purpose. The BoG also accorded necessary age relaxation to enable the Petitioners to be considered against the existing vacancies. It also raised the consolidated remuneration paid to the Petitioners to Rs.15,000/- per month. In 2014, the BoG recommended regularization and further enhancement of the said remuneration.

4. The Committee formed pursuant to the directions of the BoG, submitted a report dated 20th May, 2011, confirming that the Petitioners have adequate educational and technical qualifications; that their appointment was through a proper laid down procedure, by a duly appointed Selection Committee. It suggested consultation with other nodal ministries / departments for advice regarding regularization of their services.

5. Since nothing was done thereafter the Petitioners filed OA No.2173 of 2013 before the CAT.

6. In the impugned order, the CAT referred to the decision of the Supreme Court in Secretary, the State of Karnataka v. Uma Devi (2006) 4 SCC 1 and U.P. State Electricity Board v. Pooran Chandra Pandey (2007) 11 SCC 92.

The CAT in a short order, held as under:

"12. It is an admitted fact that both the applicants were appointed purely on contract basis in a project for a limited period of time. They were not appointed against any sanctioned post. Therefore, the respondents have consistently been stating that according to the judgment of Uma Devi (supra), such appointment cannot be regularised. Neither do the applicants have any right to; be regularised, nor the respondents have any legal duty to regularise them.

13. In view of the above, we are of the opinion that the judgment/in Uma Devi's case (supra) holds the field and the respondents are perfectly justified in the stand taken by them. We, therefore, see no merit in the OA and the same is dismissed. No costs."

7. At the first hearing of the present petition, on 17th November, 2015, the following order was passed by this Court:

"The petitioners claim to be working continuously for a period of more than fourteen years on contractual basis with respondent no.2. It is also claimed by the petitioners that their appointments was not illegal, they were appointed

against the sanctioned post and they also meet the eligibility criteria.

Learned counsel for the petitioners places reliance on a decision rendered by the Supreme Court of India in the case of Amarkant Rai v. State of Bihar Ors., Civil Appeal No.2835/2015, decided on 13.3.2015, wherein the Apex Court has considered the judgment rendered in the case of Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors., reported at (2006) 4 SCC 1 and also the subsequent judgment rendered in the case of State of Karnataka And Ors. v. M.L. Kesari & Ors., reported at (2010) 9 SCC 247.

Mr. Mishra, learned counsel for respondents no. 1, 2, 4 and 5, submits that the petitioners are not working against the sanctioned posts, however, he seeks time to take instructions having regard to the fact that the petitioners have been working on contractual basis with respondent no. 2 uninterruptedly for a period of fourteen years.

Issue notice to respondent no.2 to show cause as to why rule nisi be not issued, returnable on 17.12.2015. Notice in the stay application as well for the date fixed."

8. It must be noticed at this stage that even in the petition filed in this Court, in para 11, it is stated that soon after the impugned order of the CAT, the NYKS on 1st October 2015, issued a termination order. Consequently, one of the prayers in the petition was for setting aside the said order.

9. In response to the notice issued, NYKS has filed a counter affidavit, where at the outset, it was stated that the services of both the Petitioners had been terminated with effect from 1st October, 2015. It was claimed that the present petition was filed more than a month thereafter and had therefore, been rendered infructuous. In the counter affidavit, reliance is placed on the decision in Pinaki Chatterjee v. Union of India (2009) 5 SCC 193 and Uttaranchal Jal Sansthan v. Laxmi Devi (2009) 7 SCC 205, to oppose the plea for regularization on the ground that it would violate Articles 14 and 16 of the Constitution. It is claimed that at the time of engagement of the Petitioners on contractual basis, the minimum requirements and other formalities required for the regular post were not fulfilled and that there was no sanctioned post at that time.

10. On 5th September, 2016, the following order was passed by this Court:

"Learned counsel for the petitioners submits that the petitioners have been working continuously for more than 14 years on contractual basis and their services stand terminated in October, 2015.

The OA filed by the petitioners were rejected based on a decision rendered by the Supreme Court in the case of Secretary, State of Karnataka v Uma Devi reported in (2006) 4 SCC 1.

Learned counsel for the respondents also submits that the project on which, the petitioners were working has come to an end.

At this stage, we have asked Mr. Ramachandran, learned counsel for the respondent No. 2/Nehru Yuva Kendra Sangathan, as to whether any Stenographers are being employed on contractual basis for any project or not. He submits that the appointments are made by the Project Partner through agencies. As there are only two petitioners, who have been working for more than a decade, we request the respondents to seek appropriate instructions as to whether the Project Partner of the respondents can accommodate the two petitioners in any of their projects as the petitioners submit that they have now become overage and they were always under the impression that their services would be regularized.

List on 24th October, 2016."

11. On the next date on 24th October, 2016, the Court was informed that the services of the Petitioners were no longer required and that the Respondents had "outsourced housekeeping services to a third-party agency". It was submitted that the Respondents were not procuring stenographers from any agency. The Respondents were asked to obtain instructions on whether there were vacant posts of Assistants/Stenographers and whether they intend to fill up the vacant posts. At the next hearing on 24th January, 2017, the counsel for the NYKS reiterated that it did not require the services of the Assistants / Stenographers. The Court directed NYKS to file an affidavit in this regard.

12. Pursuant thereto, an affidavit has been filed by the NYKS, indicating different schemes/projects in which the Petitioner No.1 was engaged from 6th November, 2001 till 1st October, 2015, in a tabular form. The same information was provided also in respect of the Petitioner No.2. It was stated that neither of the Petitioners was employed against any of the post in the NYKS and that the posts in a project/scheme are coterminous with the completion of the project. In para 12 of this affidavit, it was stated that there were two new projects to be undertaken with the financial support of the Ministry of Water Resources and there would be requirement for Project Officers/Project Assistants, Data Entry Operators, etc., for which applications would be invited through advertisements. It is stated that the Petitioners, if so wished, could apply for these posts.

13. When the matter thereafter came up for hearing on 4th December 2018, the following order was passed:

"We have heard learned counsel for the parties at some length.

During the course of hearing, our attention has been drawn to the sanction order dated 16.11.2007 whereby the sanction was accorded by the President for creation of several posts in the respondent no.2-Nehru Yuva Kendra Sangathan, inter alia, of Stenographers-I, Stenographers-III, Assistant and Account Clerk Typist which are 4, 27, 43 and Anr. 311 in number, respectively. We direct the respondent to file an affidavit disclosing as to how these posts were filled up and occupied year after year from 2007 onwards after the sanction was accorded.

Counsel for the petitioner has also shown to the Court the advertisement issued by the respondent no.2-Sangathan to fill up several clerical posts issued in May, 2018. The submission of learned counsel for the petitioner is that the petitioner had sought relaxation of age to be able to apply against the said advertisement but no response was received from the respondents to the said representation. In our view, the petitioner could have taken appropriate steps in that regard. The petitioner should bring the said advertisement on record on an affidavit. The respondent shall also file an affidavit mentioning therein as to why the petitioner cannot be granted age relaxation. The status of the recruitment process initiated in May, 2018 should also be disclosed in the affidavit by the respondents.

Learned counsel for the petitioner has also shown to the Court the communication dated 01.10.2013 issued by the respondent no.2-Sangathan to the Department of Youth Affairs, Ministry of Youth Affairs and Sports on the subject of regularisation of three employees of the said organisation. The petitioner should bring said documents on record on an affidavit and respondent should state as to what steps have been taken in the matter of regularisation of the petitioner and other similarly situated contractual employees, who had been working with respondent no.2-Sangathan over decades. The petitioner should file the affidavit on all the aforesaid aspects within two weeks from today. The respondent should file its response on all the aforesaid aspects within two weeks thereafter.

List on 24.01.2019."

14. Pursuant thereto, on 19th December 2018, the Petitioners filed CM No.54270/2018 for directions to the NYKS to regularize the services of the Petitioners against the posts advertised on 15th October, 2018, by giving age relaxation, as recommended by the Committee set up by the BoG. The Petitioners also filed separate affidavits, enclosing copies of the advertisements issued on 29th April 2018, and the representations given afresh by the Petitioners on 17th April 2018, seeking regularization. The Petitioner No.2 filed a separate affidavit on 14th December 2018, to the same effect.

15. A reply was filed by the NYKS to the said affidavit, on 18th January, 2019. It was stated that it is only the Competent Authority which can take a decision on the recommendations of the BoG. It was not denied that an advertisement had been issued on 29th April, 2018 and 15th December, 2018 for filling up certain posts.

16. In a separate affidavit filed on 19th January, 2019, NYKS responded to the order dated 4th December, 2018, by pointing out that as on 16th November, 2007, there were five Lower Division Clerks ("LDCs"), who were promoted as UDCs on 18th June, 2009. On that date, five others working as UDCs were promoted as Assistants. Five Assistants were promoted as Section Officers.

17. As far as Stenographers-II were concerned, there were four persons, who were promoted on the above date as Stenographers-I, and six others, who were

working as Stenographer-III, and then promoted as Stenographer-II. According to the Respondent No.2, the minimum qualification of the post of Accounts Clerk-cum-Typist was B.Com. from a recognized university or a degree with two-year experience of accounts work. While the recruitment process was initiated in 2018, only the post of the District Youth Coordinators ("DYCs") and Accounts Clerk-cum-Typist ("ACTs") were got to be filled up. The post of DYC carried a pay scale of Level-10, with a grade pay of Rs.5400/- per month. The Petitioners who were working on contractual basis, with a consolidated remuneration of Rs.15,000/- per month, could not, therefore, be considered for the post of DYCs either. Accordingly, it was submitted that since neither of the Petitioners fulfilled the essential qualifications for the two posts advertised in May, 2018, they could not be considered against those posts. It was stated that the process for selection against the two advertised posts was already complete and appointment letters have already been issued.

18. A reference is being made to the communication dated 1st October, 2013, from the NYKS, opposing any move for regularization in view of the decision of the Supreme Court in *Secretary, the State of Karnataka v. Uma Devi* (supra).

19. This Court has heard the submissions of learned counsel for the parties. The fact of the matter is that there are no sanctioned posts against which either of the Petitioners can be accommodated. With there being no sanctioned posts against which the Petitioners can be asked to be regularized, the Court is not in a position to grant that relief to either of the Petitioners. The law in this regard being abundantly clear and with the Respondents MYAS and NYKS being bound by the policy decision of the Ministry of Finance and MYAS, this Court is not in a position to accede to their plea for regularization. In that view of the matter, the plea of the Petitioners cannot be considered.

20. In their written submissions, the Petitioners have claimed that their cases fall within the Exception to Para 53 of the decision in *Secretary, the State of Karnataka v Uma Devi* (supra), which reads as under:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained In *SM. Narayanappa* (supra), *R.N. Nanjundappa* (supra), and *B.N. Naoaralan* (supra), and referred to in paragraph 15 above, of duly qualified persons In duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this Judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that

require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

21. It must be recalled that in their affidavits repeatedly filed, both before the CAT and in this Court, it was disputed by Respondents that the Petitioners were appointed against the sanctioned posts. The reference then be made to the decision in *State of Karnataka v M.L. Kesari* (2010) 9 SCC 247, holding that those who possessed necessary qualifications and had served for long on daily wages/ad hoc/casual employees, "but against sanctioned post", should be regularized in view of the long service rendered by them. The repeated assertions by the Petitioners that they were appointed against sanctioned posts, have been repeatedly denied by the Respondents on affidavits. It is not possible, therefore, for this Court to examine this disputed question of fact.

22. For all of the aforementioned reasons, there is no merit in this petition and the same is dismissed as such. Pending applications are also disposed of. No costs.