

(2015) 04 DEL CK 0024

In the Delhi High Court

Case No : L.P.A. 212/2015 and C.M. No. 6687 of 2015

Satish Kumar Singh

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Citation : (2015) 7 AD 112 : (2015) LLR 573

Hon'ble Judges : Pradeep Nandrajog, J; Vibhu Bakhru, J

Bench : Division Bench

Advocate : Sanjay Mani Tripathi and Kamal Kant Tripathi, for the Appellant

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.

C.M. No. 6687/2015

Allowed subject to just exceptions.

LPA No. 212/2015

1. Not for the reasons given by the learned Single Judge, we dismiss the appeal but for different reasons. Vide impugned decision dated March 24, 2015, the learned Single Judge has held that in view of the law declared by the Constitution Bench of the Supreme Court in the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415, the State Bank of India could not even formulate a policy to give permanent employment to persons initially recruited on contract basis.

2. The learned Single Judge has relied upon a decision pronounced by the learned Single Judge in W.P.(C) No. 471/2015 filed by Radhey Shyam and others. The said writ petitioners were claiming regularization under the Government of

NCT of Delhi and were appointed by the department as contract employees. The quoted paragraphs of the decision in Radhey Shyam's case in the impugned order would show that appointments to said posts had to be made by selection through the Delhi State Service Selection Board.

3. The ratio of law declared in Radhey Shyam and others" case would not be applicable to the facts of the instant case.

4. The facts of the instant case are that for recovery of dues in rural areas the State Bank of India required Officers Marketing and Recovery (Rural). This was in the year 2008. It being an experiment, one did not know whether it would be successful or not and for said reason appointment was made on contract for two years. An advertisement was issued inviting applications from the eligible candidates.

5. The appellant and others who had applied were screened as per the criteria evolved by State Bank of India. The petitioner was one of the many successful candidates. He was offered appointment on contract for a period of two years. In the letter dated February 09, 2008 offering appointment, it was clearly indicated to the appellant that the appointment was on contract for two years and would confer no right for permanent absorption. It was indicated that the service would be governed by the State Bank of India Management Training/Executive Service Conduct Rules, 2004 to the extent they would apply to the post of Officer (Marketing and Recovery) Farm Sector.

6. The petitioner who was required to report for duty after training on February 28, 2008 did so. But proceeded on leave without any sanction on March 17, 2008 and joined back on May 07, 2008. Thereafter, put in a tabular form, the appellant availed leave without any prior intimation as under:--

7. Finding that the scheme of appointing Marketing and Recovery Officers in the Farm Sector was successful the State Bank of India took a decision to frame a policy to make permanent those who were achievers. The policy was notified on July 20, 2010. The policy is named "Permanent Absorption of Officers Marketing and Recovery (Rural), Technical Officers (Farm Sector), Micro Finance Marketing Officer, Customs Relationship Executive (PB) and Customers Relationship Executive (ME)" in the Junior Management Scale I. As per the policy, those who had achieved minimum target of 60% in the immediate preceding year i.e. year 2009-10 and whose performance on other parameters was found to be up to the mark were alone entitled to be made permanent.

8. To put it pithily, the policy was not to regularize all contract employees. The policy was to subject the contract employees to an evaluation and those who were found hardworking, meritorious and of use to the organization were alone to be made permanent.

9. The appellant was appraised. His propensity of obtaining leave without prior intimation; the below average targets achieved by him (which were below 60%)

resulted in the decision not to make him a permanent employee.

10. The view taken by the learned Single Judge that in view of the Constitution Bench decision in Uma Devi's case the claim for being made permanent was not maintainable is ex-fade incorrect.

11. The law declared in Uma Devi's case was that regular employment to public posts can be effected as per the recruitment rules. It was held that Courts cannot pass orders directing regularization of employees who had entered the service through the backdoor.

12. In the instant case initial appointment, albeit on contract, was after inviting applications from all eligible candidates who were subjected to a scrutiny. Thereafter, a policy decision was taken to make permanent only those who were found beneficial to the organization and for which State Bank of India had two years' work performance as the objective material for consideration. The process of making permanent was as per the rules.

13. But since we find that the appellant has been subjected to the appraisal for being made permanent on correct principles laid down in the policy we dismiss the appeal. What more can we speak about the appellant other than show him his face through the tabular chart, which is the mirror to him, concerning the leave. Required to start working from February 28, 2008 the petitioner worked hardly for 17 days and was absent for 52 days. Working thereafter for a month and one week he remained absent for 22 days. Working thereafter again for a month he was absent for 109 days.

14. In his first year of contractual employment we find that he appellant has remained absent for 188 days. Excluding 52 Sundays the number of working days in a year comes to 313. Excluding 20 gazetted holidays the working days get reduced to 293. Out of these 293 working days the petitioner has not worked for 188 days. The appeal is dismissed in limine but without any order as to costs.

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Dismissed as infructuous.