

(2013) 01 DEL CK 0048
In the Delhi High Court
Case No : Writ Petition (C) 5592 of 2010

Seema Chaturvedi

APPELLANT

Vs

Navyug School Educational Society and Others

RESPONDENT

Date of Decision : 09-01-2013

Acts Referred:

Citation : (2013) 2 SCT 702 : (2013) 3 SLJ 88

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : K. Venkatraman and Mr. S. Seth, for the Appellant; B.B.Gupta with Mr. Anshul Mittal for R-1, Mr. Ajandra Sisodiya, for R-3 and 5 and for R-3 and 38 in W.P.(C) 5738/2010, Ms. Maninder Acharya, for Union of India and Mr. N.D. Kaushik for Mr. Arun Bhardwaj, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—Both the aforesaid writ petitions are being disposed of by this common judgment as facts are more or less identical and the issues are identical. There are two main issues which arise in the writ petitions by which the petitioners seek appointment to the post of primary teacher (Humanities) and which are firstly according to the petitioners they qualified in the recruitment process entitling them to appointment, and, secondly that the petitioners are entitled to be regularized as they have worked on contractual basis for a long period of time.

W.P.(C) No. 5592/2010

The petitioner was appointed as a primary teacher (Humanities) on contract basis in the respondent no. 1-school on 2.7.2002 which is managed by respondent no. 2-NDMC. The contract period of the petitioner was extended from time to time when in the year 2008, the respondents decided to initiate regular recruitment process for employment of the primary school teachers in the respondent no. 1 The petitioner applied for being appointed as per the regular

recruitment process but respondent no. 1 declared the petitioner unsuccessful in the recruitment process on the ground that the petitioner did not fulfill the requirement of being a graduate in the requisite subjects as prescribed by the recruitment rules.

2. The reliefs which have been prayed for in the present writ petition read as under:-

(a) To quash and set aside the selection list dated 26.5.2009, 31.7.2009 and 28.10.2009 and consequent appointments to the post of PRT(Humanities) made in terms of advertisement dated 17th June 2008 by Respondent No. 1 and 2.

(b) Direct the Respondent No.1 to regularize the Petitioner's service against the post on which she was appointed as PRT (Humanities) by Respondent No. 1 in 2002 and continued working till 2009.

3. Taking prayer (b) first of the claim of the petitioner to seek regularization as she was working as a PRT (Humanities) for a long period of time and also thus had legitimate expectations of being regularized, it may be said that this issue is no longer res integra and has been decided against the petitioner by the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, . The Supreme Court in the case of Umadevi's (supra) has laid down the following ratio:-

(i) The questions to be asked before regularization are:-

(a) 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.

4. Therefore, the claim of the petitioner to seek regularization or permanence in employment on the ground of having worked as a contractual teacher for a number of years is hit by the ratio of Umadevi's case (supra) and has to be rejected. The contention of the petitioner that the respondent no. 2 had framed a scheme for regularization to the post of contractual teachers such as the petitioner is also hit by the ratio of Umadevi's case wherein the Constitution Bench of the Supreme Court has specifically said that no scheme can be framed by the Union/State/instrumentalities of the State which will violate the constitutional mandate of employment by the Government/State through the regular recruitment process. I may note that the respondent no. 1 has denied that any such decision was taken of regularizing contractual teachers by the committee constituted by the respondent no. 2, however, even assuming that the committee of the respondent no. 2 took such decision of regularizing contractual teachers, the said decision would be quite clearly illegal in view of the ratio in Umadevi's case.

5. The relief claimed by the petitioner of regularization on the basis of continuous service and legitimate expectation is therefore misconceived and rejected.

6. The second issue requiring decision in the present case is as to whether the petitioner was qualified in terms of the recruitment rules for being appointed inasmuch as the petitioner claims that she was qualified whereas the respondent no. 1 denies the fact.

7. The relevant recruitment rules in this regard read as under:-

8. A reference to the recruitment rules shows that candidate must have a bachelor degree. The bachelor's degree must be in any of the subjects being English, Hindi, Geography, Political Science, Mathematics and History. The candidate must have 55% marks or more in the bachelor's degree of the concerned subject.

9. The petitioner admittedly has a bachelor's degree in Philosophy i.e. a subject which is not included in the recruitment rules which only provides for a bachelor's degree in English, Hindi, Geography, Political Science, Mathematics and History. Though it was sought to be canvassed on behalf of the petitioner that any bachelor's degree is enough provided a candidate has 55% marks in any of the subjects during bachelor's degree of Hindi, English, Geography, Political Science, Mathematics or History, but the contention is misplaced inasmuch as, the recruitment rules require two years experience of teaching in "concerned subject" and which therefore removes any doubt with regard to the fact that the bachelor's degree must be in the concerned subject of English or Hindi or Geography or Political Science or Mathematics or History. Admittedly, the petitioner has a bachelor's degree in Philosophy which is not a subject under the relevant recruitment rules and therefore, the petitioner would not be qualified under the recruitment rules.

10. Petitioner has also raised a contention that respondent No. 8-Smt. Poonam Mathur is not qualified for the post but was appointed and therefore the petitioner should also be appointed. It may be noted that respondent No. 8-Smt. Poonam Mathur has a graduation degree in Humanities. If that be so, the respondent No. 8 would fall under either Political Science or History because the course of B.A. (Humanities) is a general course with respect to Humanities subjects and the post in question is Primary Teacher (Humanities). In any case, I need not go in detail on this aspect inasmuch as if otherwise the petitioner had qualified according to the recruitment rules and she was not being appointed and the respondent No. 8-Smt. Poonam Mathur was illegally appointed, then, I would be required to go into this aspect in detail, however, I express no opinion one way or the other on the appointment of respondent No. 8-Smt. Poonam Mathur and such an issue can only be examined in case the candidate who was otherwise first on the merit list for being employed after Smt. Poonam Mathur but was not appointed, and such candidate had come to this Court by filing a petition.

11. Therefore, the petitioner did not qualify according to the recruitment rules inasmuch as she did not have a Bachelor's degree in either English or Hindi or Geography or Political Science or Mathematics or History. Once the petitioner did not have the necessary qualifications, there does not arise any question of granting relief to the petitioner for seeking a direction for an employment with respondent No.1 as this direction claimed would be in violation of the recruitment rules.

12. The writ petition of the petitioner-Ms. Seema Chaturvedi being W.P.(C) No.

5592/2010 is accordingly dismissed, leaving the parties to bear their own costs.

W.P.(C) No. 5738/2010

13. The legal issues in the present case would stand decided against the petitioner in view of the reasoning given while dismissing W.P.(C) No. 5592/2010. So far as the factual aspect of qualification as per the recruitment rules is concerned, admittedly the petitioner only has a degree in B.Com and a degree in B.Com is not a degree either in English or Hindi or Geography or Political Science or Mathematics or History and in either of which subjects, a graduation degree was required before a person could be said to be qualified for being appointed as a Primary Teacher (Humanities). The petitioner Ms. Shaily Sapra therefore neither can claim regularization on the basis of her past contractual employment in view of the ratio in the case of Umadevi (supra) and nor can she claim employment as per the recruitment process inasmuch as she was not qualified as per the recruitment rules as applicable. The writ petition of the petitioner Ms. Shaily Sapra being W.P.(C) No. 5738/2010 is also therefore dismissed, leaving the parties to bear their own costs.