

(2013) 10 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (C) Nos. 6281, 6386 and 6429 of 1998

Shri Dev Singh and Others

APPELLANT

Vs

The National Commission for Women and Another

Veena Bhardwaj and Others Vs National Commission for
Women and Another
 Ms. Madhu Pal and Others Vs
Union of India and Another

RESPONDENT

Date of Decision : 05-10-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2013) 10 DEL CK 0273

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

W.P.(C) No. 6281/1998

1. Petitioners were working as casual labourers with the respondent No. 1/ National Commission for Women. They seek directions for not being treated as casual labourers or contractual labourers and for direction to the respondent No. 1 to create regular posts and to regularize the employments of the petitioners. The Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, 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. Therefore, before petitioners can be regularized it is necessary that there were sanctioned posts, there were vacancies in the sanctioned posts, petitioners met the qualifications for appointments and petitioners had to be selected through a competitive method whereby candidates were called after advertisement in newspaper and/or through the employment exchange.

3. The writ petition does not show that any of the mandatory requirements exist as stated by the Constitution Bench in the case of Umadevi (supra) viz. of there being sanctioned posts, there being vacancies in such sanctioned posts to which

petitioners were appointed and that petitioners were appointed after selection through advertisement in newspaper and/or through the employment exchange. Supreme Court in the judgment in the case of Umadevi (supra) has categorically observed that there cannot be regularization of such casual labourers. In the case of Umadevi (supra) the Supreme Court has also held that there cannot be directions to create/sanction posts as the financial aspects are best left to the government to decide. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

W.P.(C) Nos. 6386/1998, 6429/1998 and 6640/1998

In view of the reasoning given while dismissing W.P.(C) No. 6281/1998, these writ petitions are also dismissed. A copy of this judgment be sent to the respondent No. 1 through the Delhi High Court Process Serving Agency.