
(2010) 12 DEL CK 0362

In the Delhi High Court

Case No : Writ Petition (C) No. 5517 of 2002

Smt. Maya Devi

APPELLANT

Vs

Family Welfare Planning Centre and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2010) 12 DEL CK 0362

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.K. Saini and Sitab Ali Chaudhary, for the Appellant; H.R. Gangwani, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By the present petition, the Petitioner who was working as a Safai Karamchari of the Respondent No. 1, a Family Welfare Planning Centre, seeks the relief of regularization of her services with all consequential benefits.

2. On behalf of the Respondent No. 1, it is urged that the petition is liable to be dismissed for two reasons. The first reason is stated that the funding of the welfare organization is in fact almost wholly by individual officers/airmen and the Government does not in any manner fund the Respondent No. 1. It is, therefore, argued that the Respondent No. 1 is not a State as per Article 12 of the Constitution of India and therefore, the writ petition is not maintainable. Per contra the counsel for the Petitioner urged that the payment of the Petitioner is being partly funded by the Union of India and therefore, it should be held that the Respondent No. 1 is a State.

3. I am afraid I am not able to agree with the contention of the Petitioner that the Respondent No. 1 is a State. A statement has been made by the counsel appearing for the Respondent No. 1, today, on instructions from Wing Commander Mr. Mujeed, Station Officer (looking after the Respondent No. 1) that

the entire funding of the welfare organization is by the individual officers and the Respondent No. 1 welfare organization does not get any funding from the Union of India. Clearly therefore, the Respondent No. 1 is not a State. Of course, part of the salary, which is given to the Petitioner is also coming from the Union, however, the same would not mean that the Petitioner is an employee of the Union, because, the case of the Petitioner herself is that she is an employee of the Respondent No. 1, welfare organization and in any case at the best some funding only of Respondent No. 1 would be from Union of India. Useful reference in this behalf may be made to the case of R.R. Pillai (dead) through Lrs. Vs. Commanding Officer HQ S.A.C. (U) and Others, in which it was held that employees of the Unit Run Canteens are not government employees. The Respondent No. 1 in this case would be similar to Unit Run Canteens as it is basically funded by the individual officers/Airmen.

4. The second reason advanced for dismissal of the petition is that in terms of the decision of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , there cannot be regularization of the services of those persons who have not been appointed against substantial posts. In the present case, inasmuch as the Respondent No. 1 is not a State and in any case it does not have any sanctioned post of a part time Safai Karamchari (the Petitioner was appointed in terms of a letter which described her as a part-time safai karamchari) it cannot be said that the same is therefore a duly sanctioned vacant post as stated by the Supreme Court in Uma Devi's case (supra) in para 53 of the said judgment. I am of the opinion that in view of Uma Devi's case, the Petitioner unfortunately is not entitled to any relief in the present case.

5. In view of the above, I have no option but to dismiss the writ petition, leaving the parties to bear their own costs.

C.M.No.9382/02 in W.P.(C) No.5517/2002

Interim orders stand vacated.

Application stands disposed of.