
(2015) 05 DEL CK 0379
In the Delhi High Court
Case No : LPA No. 289 of 2012

University of Delhi and Others

APPELLANT

Vs

Nalini Prabhakar

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) 221 DLT 249

Hon'ble Judges : Pradeep Nandrajog, J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Beenashaw N. Soni, for the Appellant; Avinash Sharma, Advocates for the Respondent

Final Decision : Disposed off

Judgement

CM No. 5917/2015

1. The University of Delhi seeks clarification of the order dated July 5, 2013 passed by the Division Bench in light of the order dated February 27, 2015 passed by the learned Single Judge. The clarification is warranted, as pleaded in the application, due to the observations made by the learned Single Judge in paragraph 3 of the order dated February 27, 2015 with an opinion expressed in paragraph 4 thereof. The observations made in paragraph 3 and the opinion expressed in paragraph 4 by the learned Single Judge read as under:

"A reading of the operative portion of the judgment dated 29.7.2011 passed by a learned Single Judge of this Court in W.P.(C) No. 7217/2004 seems to prima facie show that this aspect was possibly covered in favour of the petitioner, however, the Division Bench by disposing of the review petition allowed the University to look into the case in accordance with law, and on which basis the University has factually concluded that the petitioner had not completed a service period of 10 years prior to passing of the judgment in Umadevi's case (supra). The issue, however, is that the University can at all look into this aspect of the ground that it has to examine the matter "in accordance with law", although, para 25 of the

judgment dated 29.7.2011 seems to conclude the issue in favour of the petitioner."

To appreciate the observations and the opinion expressed by the learned Single Judge it would be sufficient if we were to note that the first respondent: Nalini Prabhakar, filed a writ petition, impleading the University of Delhi as the first respondent and the School of Correspondence Courses and Continuing Education as the second respondent in the writ petition, praying that the decision dated September 30, 2003 passed by the Executive Council of the University of Delhi, not accepting the recommendations of the Managing Committee of the second respondent recommending the regularization of the service of the first respondent, be quashed with mandamus issued that she should be regularized.

2. It was her case that she was appointed by the second respondent of the writ petition pursuant to applications invited from eligible candidates as per an advertisement dated August 8, 1995 and upon the eligible candidates being appraised by a Selection Committee which met on February 9, 1996. It was her case that the panel was approved by the Executive Council of the University. As per her since though permanent posts were available she was appointed on a temporary basis by the letter dated July 17, 1996. She claimed to have worked continuously as an ad hoc teacher till when she filed the writ petition in the year 2004. The cause for her to file the writ petition was the decision taken by the second respondent in the writ petition to regularize her service which was not approved by the Executive Council of the University.

3. The stand of the University was that the decision of 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, did not entitle Nalini Prabhakar to be regularized because when she was appointed there was no vacant post in the Department of English of the second respondent in the writ petition.

4. Vide decision dated July 29, 2011, disposing of the writ petition the learned Single Judge has noted that for years together no attempt was made to make permanent appointment. The learned Single Judge has further noted that one Dr. Biswal who was similarly situated was regularized in service. The writ petition was disposed of issuing a direction in paragraph 25 by the learned Single Judge as under:

"25. For the aforementioned reasons, the petition succeeds. A direction is issued to Respondent No. 2 to convene a meeting of its MC and consider the case of the Petitioner for being regularized in terms of the observations of the Supreme Court in para 44 in *State of Karnataka v. Umadevi* within a period of four weeks from today. The Petitioner's regularization without any benefit of arrears of pay or allowances will be from the date on which the first vacancy for a permanent

post in the Department of English in Respondent No. 2 occurred after her appointment. This will also be the date for the purposes of her seniority and calculation of qualifying service for pension, if any. The MC will proceed on the basis that the Petitioner's initial appointment was properly made and that she continued as a temporary lecturer for over 15 years not on account of interim order of a Court or Tribunal. Within a period of two weeks thereafter, the MC will forward the Petitioner's case to the EC for approval. The EC will take a decision on the said recommendation in accordance with law within a period of four weeks thereafter and convey it forthwith to Respondent No. 2 with a copy to the Petitioner. The consequential orders will be issued by the Respondent No. 2 within a further period of two weeks."

5. The decision dated July 29, 2011 disposing of the writ petition filed by Nalini Prabhakar was challenged by the University of Delhi and School of Correspondence Courses and Continuing Education but with a delay of 209 days which was prayed to be condoned vide CM No. 6542/2012. The said application was dismissed by the Division Bench on December 06, 2012. Delay in filing the appeal was not condoned and as a consequence the appeal was dismissed.

6. RP No. 89/2013 filed by the University of Delhi and School of Correspondence Courses and Continuing Education was dismissed by the Division Bench on July 5, 2013 noting that the direction issued by the learned Single Judge in paragraph 25 of the order dated July 29, 2011 did not warrant any interference. After noting the directions issued by the learned Single Judge in paragraph 3 of the order dated July 5, 2013, in paragraphs 4 to 6 of the order dated July 5, 2013, the Division Bench observed as under:

"4. The direction issued by the learned Single Judge requires the matter to be considered at the first instance by the Managing Committee of the School of Correspondence and Continuing Education and forward the case of the respondent to the Executive Council of the University of Delhi. The Executive Council has to take a decision in accordance with the law. The law which needs to be considered by the Executive Council is the one 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 which opens the limited window for regularization of temporary/ad hoc employees whose appointments are irregular and not illegal; irregularity to be understood as explained in *Uma Devi's* case.

5. We do not find any observation made by the learned Single Judge which interprets a rule of law against the appellant. Meaning thereby, nothing contained in the impugned decision operates adversely against the interest of the appellant. The only thing which the impugned judgment requires appellant to do is as aforesaid.

6. Needless to state such observations which are made in the impend judgment which has led the learned Single Judge to pass the direction in paragraph 25 have not to be treated as determinative of any legal position or a mandamus to the appellant to decide in a particular manner."

7. A second round of litigation is being fought between the parties. Nalini Prabhakar is litigating once again and it is obvious that the University of Delhi has not agreed to regularize her service. It is in said writ petition that the learned Single Judge has made an observation with an opinion followed in paragraph 3 and 4 of the order dated February 27, 2015.

8. The doubt, and in respect whereof a clarification is warranted by the learned Single Judge, is on the sentence "the Executive Council has to take a decision in accordance with the law" in paragraph 4 of the order dated July 5, 2013 passed by the learned Single Judge.

9. We see no ambiguity in the order dated July 05, 2013 because in the very next sentence the Division Bench has written "the law which needs to be considered by the Executive Council is the one 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 , which opens the limited window for regularization of temporary/ad hoc employees whose appointments are irregular and not illegal; irregularity to be understood as explained in Uma Devi's case".

10. It is trite that every decision, be it administrative, quasi judicial or judicial has to be taken in accordance with the law and therefore the sentence "the Executive Council has to take a decision in accordance with the law" can hardly create any doubt warranting any clarification.

11. It would be for the learned Single Judge to decide the writ petition keeping in view the pleadings, the law applicable on the issue between the parties and the orders in the earlier proceedings between the parties. The application is disposed of without any order as to costs.