
(2012) 10 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) 4973 of 1993

Vijay Pal Singh and Another

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 10 AD 25

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Sudhir Kumar Sharma, for the Appellant; Beena Shah Soni and Ms. Mani Roy, for the Respondent

Judgement

Suresh Kait, J.—Vide the instant petition petitioners are seeking prayer as under:

(a) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents no. 1 and 2 to reinstate the petitioners to the posts of Mali/Gardner with immediate effect;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents no. 1 & 2 to fill the six posts of Mali/Gardner mentioned in Notice dated 13.07.1993 in strict compliance of seniority List prepared by Respondent no. 2;

(c) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents no. 1 and 2 to regularise the petitioners as a result of reinstatement;

(d) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents no. 1 and 2 to immediately release the arrears of salary due to petitioners no. 1 to 5, 11 and 12;

(e) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents no. 1 and 2 to treat the petitioners at par with

permanent employees and to pay the petitioners the salaries payable to permanent employees;

(f) issue a writ of certiorari or any other appropriate writ, order or direction quashing/setting aside the appointments of respondents no. 3 to 7 made by respondent no. 2, or in the alternative issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents no. 1 & 2 to appoint petitioners no. 1, 2, 3, 6 and 11 from the same date the respondents no. 3 to 7 were appointed with all consequential reliefs;

Initially, instant petition was filed by 12 petitioners. Petitioner no. 2, 4 to 8 and 10 to 12 were regularized by Delhi University. Therefore, they did not pursue their case. Since other petitioners were also not pursuing, therefore, this court vide order dated 16.03.2010 observed as under:-

The counsel for the respondent Delhi University states that out of the 12 petitioners who had filed this petition, the petitioners no. 2, 4 to 8 and 10 to 12 have already been regularized by the Delhi University and thereafter have not been pursuing this petition and no disputes remain qua them. It is further stated that petitioner no. 9 has also not been appearing in this writ petition. The counsel appears for the legal representatives of the petitioner no. 1 and for the petitioner no. 3. It is informed that pursuant to the order dated 28th January, 2010 in these proceedings, only the legal representatives of petitioner no. 1 and the petitioner no. 3 appeared before the Mediation Cell. Mediation is reported to have failed. The counsel for the respondent Delhi University also contends that the claim in this petition being for regularization only, the legal heirs of the petitioner no. 1 also can have no claim though they have been ordered to be substituted in these proceedings.

The counsel for the legal heirs of the petitioner no. 1 and or the petitioner no. 3 seeks adjournment to examine the matter.

In these circumstances, the writ petition qua all the other petitioners is disposed of.

List on 23rd April, 2010 for consideration of the writ petition qua legal heirs of petitioner no. 1 and the petitioner no. 3 only. No further adjournment shall be granted.

2. Therefore, the instant petition is qua petitioner no. 1, i.e., Vijay Pal (since expired, through his legal heirs) and petitioner no. 3 Har Prasad.

3. Counsel for the petitioner has referred the additional affidavit filed by one of the petitioners namely Sant Prasad, which reads as under:-

1. That I am petitioner no. 7 in the above writ petition and am fully conversant with the facts of the case.

2. That in Oct. 1993, there were 22 persons working as Malis in Dhaka & University Garden out of whom 21 persons were disengaged in October, 1993

leaving only one person who had orders of court in his favour. Out of these 21 persons, 12 persons filed above writ petition before this Hon''ble Court, therefore, the respondents have become inimical towards them which is evident from the fact that in December, 1993 when respondents re-engaged only those 9 persons out of 21 persons who had not come to the court even though they were junior to many of the petitioners herein.

3. That on 10.05.1994, the respondents have again engaged 6 more persons, viz. Sirrajudin, Ram Kishan, R. Swami, Raj Kumar, Surinder Kumar and Kukku Swamy who are all much junior to the petitioners.

4. That the above named all 6 persons are much junior to the petitioners. In fact, they had just worked for few months only to cut the grown up grass and were already disengaged even before the petitioners were disengaged in October, 1993.

4. Counsel for the petitioner has submitted that the University of Delhi prepared Seniority List which is as under:-

Statement of Daily wagers working in Garden Committee/Dakka Garden (who have worked for more than 730 days as on 31st July, 1991)

S. No.

Name

Date of Appointment

Total no. of days Worked as on 31st July, 1991

Remarks

Marks out of 100

1.

Sh. Ramanand (Rawan)

1975 to 31.07.91

1755*

S.C.

30

2.

Sh. Mani

1980 to 31.07.91

1707*

S.C.

30

3.

Sh. Suresh

01.10.85 to 31.07.91

1834

-

50

4.

Sh. Rajender Singh

01.05.86 to 31.07.91

1828

-

75

5.

Sh. Kharak Singh

01.05.86 to 31.07.91

1733

-

50

6.

Sh. Prem Sagar

01.05.86 to 31.07.91

1723

S.C.

45

7.

Sh. Gulzar Singh

01.05.86 to 31.07.91

1646

-

40

8.

Sh. Vijay Pal Singh

03.03.87 to 31.07.91

1500

-

65

9.

Sh. Surender Singh

01.06.87 to 31.07.91

1364

-

45

10.

Sh. Ram Bali

10.06.87 to 31.07.91

820

-

-

11.

Sh. Amar Singh

08.10.88 to 31.07.91

920

-

-

12.

Sh. Heera Singh

01.02.89 to 31.07.91

731

-

-

13.

Sh. Har Prasad

07.03.89 to 31.07.91

765

S.C.

-

14.

Sh. Satish Chand

17.11.89 to 31.07.91

784

S.C.

-

As per letter dated 17.09.1990 from Garden Choudhary, Shri Ramanand and Shri Mani were working in the Garden Committee for the last ten years on daily wages basis".

Correct List.

12.

Sh. Satish Chand

17.11.89 to 31.07.91

784

S.C.

-

13.

Sh. Har Prasad

07.03.89 to 31.07.91

765

S.C.

-

14.

Sh. Heera Singh

01.02.89 to 31.07.91

731

-

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5. The case of the petitioners is that petitioner no. 1 Shri Vijay Pal Singh had joined the respondent no. 2 on 03.03.1987. He had been working continuously since then at Dhaka and had been discharging his duties to the satisfaction of the respondent no. 2. He had received special awards for doing commendable jobs. Photocopies of such certificates are annexed hereto as Annexure P-1 Colly. Respondent no. 2 had prepared a list of casual workers/malis as per the number of days they worked as on 31.07.91, same is annexed as Annexure P-2. Name of the petitioner no. 1 appears at sl. No. 8 in the said statement of daily wagers working with respondent no. 3 which was prepared on 31st July, 1991 showing the seniority of the daily wagers. It is pertinent to mention here that persons at sl. No. 1 to 6 have already been made permanent according to their length of service.

6. Petitioner no. 2/Shri Amar Singh had joined on 08.10.1988 as Mali as a daily wager with Respondent no. 2 and he was working continuously at Dhaka since then and has also been given special award for his excellent performance. One such Certificate is annexed hereto as Annexure P-2. The name of the petitioner no. 2 also appears at Sl. No. 10 in Annexure P-2.

7. Petitioner no. 3/Shri Har Prasad had joined as daily wager on 07.03.1989 as Mali/Gardner with respondent no. 2 and he was working continuously at Dhaka since then. The name of the petitioner no. 2 appears at Sl. No. 13 in Annexure P-2.

He also received special award for his excellent performance. Copy of Certificate is annexed hereto as Annexure P-4.

8. It is submitted that the respondent no. 2 had filled six more permanent posts of Mali in August 1992 for which the petitioners had also applied. However, one Shri Peru Swami (respondent no. 4) who was an outsider, was not even working with the respondent no. 2, was appointed as permanent ignoring the seniorities of some of the petitioners whose names even appeared in Annexure P-2 and P-5. Shri Ram Bali (Respondent no. 5) whose name appears at Sl. No. 1 was made also permanent, thus superseding the petitioners No. 1, 2, 3 and 11. One Shri Gajraj/respondent no. 6 herein whose name even does not appear in the Annexure P-2, but he has also been made permanent ignoring the seniority of the aforesaid petitioners. One Shri Heera Singh/respondent no. 7 herein has also been made permanent to the post of Mali, thereby superseding some of the petitioners who had joined much earlier to Heera Singh. Similarly, one Shri

Satish Chand/respondent no. 3 as stated above, who appears at Sl. No. 12 has also been made permanent to the post of Mali thereby superseding the petitioner no. 6. Therefore, the respondent no. 2 while making appointment of respondents no. 3 to 7 ignored the petitioners no. 1 to 3, 6 and 11 who were senior to these respondents.

9. As stated in the petition, their services were terminated in view of the fact that the respondent no. 3 had put up a notice for filling six permanent posts of Mali (Gardner) vide Notice NO. GC/SI-II/93/5865 dated 13th July, 1993 as the respondents were intending to appoint persons either from outside or the persons who were juniors to the petitioners so as to deprive the petitioners from regularization.

10. Petitioners further submitted that they had experienced the same thing on earlier occasions also. The petitioners were asked to appear for the interview on 08.08.1991 and again on 31.08.1992 for the post of Mali vide their letter/Memorandum dated 5th/6th August, 1991 and 20/24th August 1992 issued by the Respondent No. 2. Copies of such memorandum of some of the petitioners are annexed herewith as Annexure P-9 Colly. The petitioners submitted that they had been discriminated in the past also and juniors to them were appointed against permanent posts of Malis by Respondent no. 2 ignoring the seniority of the petitioners.

11. Ld. Counsel for the petitioners submits that in view of the averments made in the petition, University of Delhi have been using the method of pick and chose and with mala fide intention just to discriminate the petitioner. Therefore, the petitioners were not regularized and the other persons mentioned above were regularized. Moreover, the services of the petitioners were terminated on 01.10.1993 and even the salary of the February, 1992 to July, 1992 had not been paid by the respondents.

12. Being aggrieved, the Petitioners made a representation on 01.10.1993 and 18.10.1993 which are as under:

01.10.1993

To

The Secretary,

C.P.G.C.

Delhi University

Delhi 110007

Sir,

We beg to submit that we the following persons were working in the Garden Committee as Gardeners for the last 3/7 years on daily wages. To our shock, we have been removed today with effect from 01.10.1993 from the said post. We

request you to reinstate us immediately.

18.10.1993

To

The Secretary

Garden Committee

University Garden

Delhi 110007

Sub: ILLEGAL TERMINATION OF SERVICES

Sir,

The applicants are employed as Mali/Gardner with effect from 07.03.1989 onwards having excellent service record. But the applicants reached the Time Office to report for duty on 01.10.1993, they were not allowed to mark their attendance and they were verbally told that their services had been terminated. No reasons for terminating the services were disclosed; therefore it is requested that the reasons for terminating the services be disclosed; otherwise it will be understood that you are illegally retrenching and it illegal in law.

13. However, no response was given thereto. Respondent University has filed its response to the instant petition. The stand taken by the respondent is that Shri Peeru Swami was working as a daily wager in the South Campus and had been engaged from time to time as a daily wager since, January, 1984. The Selection Committee did not strictly follow the criterion for appointing Malis on regular basis according to seniority. While considering the appointment on regular basis, past work performance and conduct was also taken note of by the Selection Committee.

14. The petitioner in its rejoinder has belied the stand of the University that the petitioners had been in service irrespective of the leave vacancies, university functions etc. The daily wagers who have been working for more than 240 days continuously were to be treated as temporary then regular employee even as per the Office Memorandum dated 10.09.1993 issued by Ministry of Personnel and Training, Govt. of India, which is annexed as annexure P-11, which is as under:-

Department of Personnel & Training, Casual Labourers

(Grant of Temporary Status and Regularization) Scheme.

1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993.

2. This Scheme will come into force w.e.f. 01.09.1993.

3. This Scheme is applicable to casual labourers in employment of the Ministries/

Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railway, Department or Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status

i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of officers observing 5 days a week)

ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group "D" posts.

15. It is further submitted that Sh. Peeruswamy had never worked with the respondent as daily wager since January, 1984, as alleged. In fact, the respondents have not made regular appointments strictly as per the seniority list prepared by them and have deviated from the same by filling the six permanent posts of Mali as alleged in the petition.

16. Respondent University has also filed additional affidavit, wherein it is stated as under:-

2. That of the 12 petitioners the University has engaged nine (9) petitioners and they have joined duty with the University. Three petitioners namely S/Shri Vijay Pal Singh, Har Prasad and Uday Veer Singh have not been re-employed on daily wages as they were not performing their duties properly.

3. That on 17th march, 1993, a memo was given to S/Shri Vijay Pal Singh and Har Prasad informing them that they had not been performing their duties satisfactorily for the last 2 months prior to giving of the memo. The said petitioners were therefore, warned that their work would be assessed and in case there was no improvement their services would be terminated. It is submitted that after 30th September, 1993, the said petitioners were not, re-employed firstly for the reasons that there was no work for them and the funds were also not available. After the funds had been made available and there was also some work for daily wages, the University engaged other petitioners except petitioners 1, 3 and 9 as their work was not satisfactory. Copy of the memo dated 17.03.1993 is marked as Annexure R-1 to this affidavit.

17. Petitioner no. 1 has filed his reply to the additional affidavit and denied the contents of the Para 3 of the additional affidavit. It is denied that the petitioners were not performing their duties satisfactorily for the last two months prior to giving of the said memos. It is stated that similar memos were issued to all the petitioners including Sant Prasad & Dinesh Giri but they were regularized.

18. It is submitted that the University issued memorandum to majority of the

petitioners just to create evidence in their favour and not to regularize the services of the petitioners. This shows their mala fide intention and state of mind to favour someone and discriminate the petitioners.

19. On the other hand, Id. Counsel for the respondent submitted that the petitioners were daily wagers. They were engaged as and when there was some work in the University. There was no seniority list prepared by the University. There was no work of perennial nature. They were never appointed by the University as there is no appointment letter issued to the petitioners.

20. Counsel for the respondent University further submitted that in reply to the instant petition, respondent has filed their counter-affidavit wherein it is stated that none of the petitioners were in the regular employment of the University. It is denied that the management terminated the services of the petitioner w.e.f. 01.10.1993 as alleged. It is submitted that due to non-availability of funds under the Specific Budget head, the petitioners were not required for the project. It is further submitted that appointments against vacant posts of Malis/Skilled Malis/Garden Choudhary were made by a duly constituted selection committee. They were appointed only in cases of extra work, leave vacancy, University functions and convocations, flower show etc. on daily wage basis at the rate of Rs. 38.80 per day.

21. It is further submitted that Shri Peeru Swami was working as a daily wager in the South Campus and has been engaged from time to time as daily wager since January, 1984. Appointment of Malis on regular basis was made by a duly constituted selection committee. There is no pick and choose method adopted by the selection committee as alleged.

22. It is further submitted that the respondents no. 3 to 7 were appointed on regular basis by a duly constituted selection committee. The petitioners were engaged only when there was work available for them and they were not paid any remuneration for the period they have not worked. The break was not artificial. The petitioners were not engaged w.e.f. 01.10.1993 due to non-availability of the work/funds.

23. Counsel for the petitioner has further submitted that they filed additional affidavit and clarify the whole issue. It is stated in the said affidavit that out of the 12 petitioners the University had engaged nine (9) petitioners and they all joined duty with the University. Three petitioners namely S/Shri Vijay Pal Singh, Har Prasad and Uday Veer Singh have not been re-employed on daily wages as they were not performing their duties properly.

24. It is further submitted that on 17th March, 1993, a memo was given to S/Shri Vijay Pal Singh and Har Prasad informing them that they were not performing their duties satisfactorily for the last 2 months prior to giving of the memo. The said petitioners were therefore, warned that their work would be assessed and in case there was no improvement, their services would be terminated. It is submitted that after 30th September, 1993, the said petitioners

were not, re-employed for the reasons that there was no work for them and the funds were also not available. After the funds had been made available and there was also some work for daily wagers, the University engaged other petitioners except petitioners 1, 3 and 9 as their work was not satisfactory. To this effect, the memo dated 17.03.1993 issued against the petitioner which is marked as Annexure R-1.

25. To strengthen her arguments Id. Counsel for the respondent has relied upon a case of Secretary, State of Karnataka and Ors. v. Uma Devi & Ors. (2006) 4 SCC, wherein it is held as under:

"While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain--not at arms length--since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity

enshrined in Article 14 of the Constitution of India. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, . That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

26. Ld. Counsel for the respondent has placed reliance on the judgment rendered in Civil Appeal No. 2129-2130 of 2004, *Union of India & Ors. Vs. Vartak Labour Union*, wherein similar view has been taken by the Apex Court.

27. Ld. Counsel for the respondent has further submitted that all the petitioners are retired from the service. There is no post for Malis as the services of the same have been outsourced and under the Contractor. The petitioners those mentioned above who were regularized were not automatic and they applied for regularization, whereas the petitioner no. 1 & 3 did not apply, therefore they were not regularized at particular time.

28. On this Id. Counsel for the petitioner has argued that Counsel for the respondent is trying to mislead this Court. He submitted that Petitioner no. 3 was called for interview vide memorandum dated 05.08.1991, which is as under:

MEMORANDUM

With reference to his application for the post of Mali, Shri Har Prasad is hereby required to appear for interview on Thursday, the 8th August, 1991 at 3.00 P.M. in the Office of the Garden Committee.

He is also required to bring Certificates etc. at the time of interview.

29. Therefore petitioner applied time and again and appeared in interview in the year 1991-92, but not regularized due to the reasons best known to them.

30. Ld. Counsel for the petitioner has argued that University is a very big

establishment. The posts of Malis are there. The petitioners or their legal heirs can be adjusted in the University. Alternatively, if the above proposal is not possible, then substantial compensation can be granted in favour of the petitioners and against the University.

31. After hearing Id. Counsels for the parties, it has emerged that the instant petition had been filed by 12 petitioners. Petitioner No. 2, 4 to 8 and 10 to 12 were regularised by the respondent University of Delhi, therefore, they did not pursue their cases. Since the petitioner No. 9 was also not pursuing the case, therefore, vide order dated 16.03.2010 passed by this Court the issue was confined to the legal heirs of the petitioner No. 1, i.e., Vijay Pal (since expired) and the petitioner No. 3 Shri Har Prasad. The respondent/University of Delhi has taken the stand that there was no seniority list prepared by the University and there was no work of perennial nature. They were never appointed by the University as there was no appointment letter issued to the petitioners. Further, it is the stand of the University that none of the petitioners were in regular appointment of the University, therefore, the University had rightly terminated the services of the petitioners w.e.f. 01.10.1993.

32. In addition to the above, it is also stated in their counter affidavit that due to non-availability of funds under the specific budget head, the petitioners were not required for the project.

33. It is not disputed that the petitioners have also worked as long as the other petitioners worked with the respondent University. It is also not disputed that the other petitioners were regularised before filing the petition and during pendency of the petition and the petitioners were not selected only for the reason as stated in the affidavit that they were issued memo for non-performance of duties to the satisfaction of the respondent University.

34. Another ground for not regularising the petitioners, as taken by the respondent, is that the other petitioners were regularised by the Selection Committee duly appointed and the petitioners never appeared before the said Selection Committee.

35. I am conscious of the settled law that daily wagers have no right to be appointed against a regular post. Even the length of service does not matter for the issue in question. However, the Court has to see whether there had been any discrimination between the similarly situated persons or any malafide on the part of the management. On the one hand the respondent has stated that they had no perennial nature of work and no funds for the project, therefore, the services of the aforesaid petitioners were terminated. On the other hand after filing the petition and during the pendency of the petition the respondent/university regularised the other petitioners. The other ground taken by the respondent is that they never appeared before the interview committee for selection. This stand falsify that the petitioner No. 3 was called for interview vide Memorandum dated 05.08.1991 as recorded in Para 30 above.

36. As regards the Memorandum issued to the petitioners for not performing the duties to their satisfaction this ground has also no weight for the reason that such type of memos had also been issued to all the other similarly situated persons as referred above and thereafter they had been regularised. Even those regularized who were not working with the respondent/University like Peeru Swami as the respondent failed to place on record any document that he had worked with the respondent as daily wager for the year 1984.

37. As recorded in Para 5 above, the petitioner No. 1 had worked with the respondent/University since 03.03.1983 to 31.07.1991 and the petitioner No. 3 worked since 07.03.1989 to 31.07.1991

38. The petitioners were well aware at the time of accepting the engagements that their nature of service would be casual in nature though at that time he was not in a position to bargain and might have been searching for some employment so as to earn his livelihood. It would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who is temporarily and casually got employed should be directed to continue permanently. However, in the present case, it is established that the petitioners have been discriminated despite their being continued to work and appearing before the Selection Committee again and again. As discussed above, the respondents could not give any plausible explanation as to why the petitioners were not given the benefit as given to the similarly situated persons. As discussed above, they had no right to be regularised but certainly the respondent had also no right to discriminate the petitioners.

39. Vide order dated 01.11.1993, this Court had directed that further appointments, if any, shall be subject to the decision of the main petition.

40. Thereafter, vide order dated 19.01.1995, this Court further directed that any promotion or appointment made shall be subject to the decision in the instant writ petition.

41. Since the petitioner No. 1 is no more, he left behind his widow Smt. Sudesh and two sons, namely, Naveen Kumar and Neeraj Kumar.

42. In these circumstances, he cannot be directed to be regularised. However, the ends of justice would be met if they are compensated by the respondent/University.

43. In view of the above, I direct the respondent University to grant a sum of Rs. 5 lakh in favour of Smt. Sudesh w/o petitioner No. 1/late Shri Vijay Pal.

44. As far as petitioner No. 3 is concerned, his services were terminated in the year 1993. More than 18 years have passed and had been fighting for the post of Mali. The University of Delhi is a big organization. Though some of the services have been outsourced, however, post of Mali is still there.

45. Therefore, the respondent/University is directed to appoint him immediately

as Mali and his services shall be regularised as and when a regular vacancy arise.

46. For the past period during which the petitioner no. 3 remained un-employed and was pursuing the instant petition, though he has not worked, however, I am of the considered opinion that he should be compensated. Therefore, the respondent/University of Delhi is directed to pay petitioner No. 3 Shri Har Prasad a sum of Rs. 1.5 lakh as compensation for past period. The instant petition is disposed of in the above terms.