

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 13414-25/2005**

Delhi University & College Karamchari Union.. Petitioners
Through: Mr.Vidhu Upadhyaya, Adv.

VERSUS

University of Delhi & Anr. Respondents
Through: Mr.Rajinder Dhawan, Adv.

RESERVED ON:
04.07.2008

% DATE OF DECISION:
28.07.2008

CORAM:
Hon'ble Mr.Justice Pradeep Nandrajog

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Marching under the banner of Delhi University and College Karamchari Union, 12 persons have filed the aforesaid petition praying that order dated 14.5.2005 terminating their services be quashed. The petitioners pray that they be reinstated in service under respondent No.2, Lady Irwin College. University of Delhi has been impleaded as respondent No.1 for the reason the college is affiliated to the University of Delhi.

2. These 12 persons were initially appointed as

temporary employees and later on as probationers on various dates against various posts. The details of the post held and the period of appointment is as under:-

Sl. No.	Name	Posts	Date of Appointment	Date of Appointment
			TEMPORARY	PROBATION
1.	Smt. Kamlesh	Safai Karamchari	15.03.04 & 13.06.04	07.07.04
2.	Smt.Sushila Devi	Mali	----	07.07.04
3.	Smt. Kunti	Hostel bearer/helper	15.03.04 & 13.06.04	07.07.04
4.	Santosh Kumar Tiwari	Office attendant	21.02.03	25.05.04
5.	Bijendra Singh	Lab. attendant	----	03.09.04
6.	Gyan Chand	Safai Karamchari	21.02.03	11.12.03
7.	Lokesh Kumar	Safai Karamchari	21.02.03	03.09.04
8.	Radhey Shyam	Safai Karamchari	21.02.03	05.04.04
9.	Paramjeet Singh	Lab.attendant	21.02.03	26.08.04
10.	Jay Bahadur	Lib.attendant	04.03.04 & 07.06.04	18.08.04
11.	Kunwar Singh	Chowkidar	21.02.03	03.09.04
12.	Manish Kumar	Library Attendant	04.03.04 & 07.06.04	18.08.04

3. Needless to state each post against which petitioner worked is a non-teaching post.

4. Relevant portion of the order dated 14.5.2005 terminating the service of the petitioner(s) reads as under:-

“Your said appointment is governed, inter-alia, by the University Non-Teaching Employees (Terms and

Conditions of Service) Rules.

Being a constituent college of the University of Delhi, College gets grants from University Grants Commission (UGC) to meet its expenses and is bound by the directions issued by UGC as well as Delhi University.

As you are appointed on probation and have not completed one year's service, therefore, you continue to be on probation.

We regret to inform you that your services are hereby terminated with immediate effect. One month's salary in lieu of notice is being paid to you.

Even though your said termination does not amount to retrenchment as defined in section 2(oo) of the Industrial Dispute Act but as a matter of abundant precaution you are being paid 15 days salary as retrenchment compensation. A sum of Rs. 8775.00 has been deposited to your Account No. maintained at Syndicate Bank (EC) which comprises of (a) one month's salary in lieu of notice and (b) 15 days salary as retrenchment compensation.

We would also like to mention that when you were appointed, there was no post of ----- in the College. Recruitment of the non teaching staff was already banned by UGC vide the letter DO No. F.7-8/99(CCP-II) dated 31 st August, 1999. By the said letter, UGC has also banned creation of new posts.

College has approached the University of Delhi as well as UGC and sought sanction of the posts of the non teaching staff. it is regretted that UGC vide its letter F.No.6-1/2003(DC) dated 17th January, 2005 informed the college about the ban on filling of non-teaching posts and further directed the college not to fill up any post till the ban is lifted. The University, vide its letter dated 9th February, 2005, advised the college that in view of the ban imposed by UGC, it cannot regularise/approve any such appointments. Under these circumstances the college therefore, cannot retain you in services."

5. The ban imposed upon by UGC vide its letter dated

31.8.1999 referred to in the letter afore-noted is contained in UGC's letter No.F.7-8/99(CCP-II). Relevant part whereof reads as under:-

".....all these measures are MANDATORY and are required to be implemented COMPULSORILY, with immediate effect. The Vice Chancellors/Registerors will be held personally responsible for non compliance of these measures in Universities and principals in case of Colleges.

1. ban on creation of plan and non plan posts
the existing ban on creation of non plan posts will continue and should be strictly enforced.

2. ban on filling up of vacant posts
Every University/College shall undertake a review of all the posts, which are lying vacant..... TILL THE REVIEW IS COMPLETED, NO VACANT POSTS SHALL BE FILLED UP EXCEPT WITH THE APPROVAL OF THE UNIVERSITY GRANT COMMISSION....."

6. Though petitioners have urged various contentions in the writ petition including the plea that having worked for over one year and there being necessity of employment, in that, the job requirement was perennial in nature and hence petitioners are entitled to be made permanent under the college, in view of the decision of the Hon'ble Supreme Court reported as Secretary, State of Karnataka & Ors. vs. Umadevi & Ors. 2006 (4) SCC 1, at the hearing held on 4.7.2008, learned counsel for the petitioners gave up said plea but restricted the challenge to the plea of discrimination and violation of the last come first go principle. It was urged that while terminating the services of the petitioners the college

retained persons appointed much after the petitioners.

7. Further facts pertaining to the plea urged are thus being noted.

8. According to the petitioners, whereas their services were dispensed with on the plea that the University Grants Commission banned creating new posts or recruiting new non-teaching staff as per its directive dated 31.8.1999, unexplainably other persons were retained in employment.

9. Unfortunately, the aforesaid plea raised in the writ petition has not been made good in the writ petition with reference to the names of the persons so retained in service.

10. In the counter affidavit filed by the college reliance has been placed upon the directive issued by the UGC. It has further been explained that UGC raised objections to the appointment of persons post 31.8.1999 without new posts being created. Reference has been made in the counter affidavit to various letter addressed by the UGC pointing out the illegality in the appointment made. Reference has also been made to letters written by the University of Delhi directing the principal of the college to strictly comply with the directives issued by the UGC.

11. In the rejoinder filed, petitioners urged that the college was using the UGC directive dated 31.8.1999 as a shield. It has been pleaded that the principal of the college is

acting mala fide. It has been pleaded in the rejoinder that after terminating the services of the petitioners, on 7.6.2005 the principal issued a hand-written note stating that persons who want to work within the college or outside the college may contact the director immediately. The said hand-written note has been annexed as Annexure P-7 along with the rejoinder affidavit. Additionally, an order dated 8.6.2005 under the signatures of the principal of the college, Dr.Anupa Siddhu has been relied upon as Annexure P-8 which reads as under:-

ATTENTION

The following persons are hereby informed that they may join duties 'on daily wages' with immediate effect and report to the Section Officer Administration of the College.

1. Mr.Gyan Chand (Safai Karamchari)
2. Mr.Radhey Shyam (Safai Karamchari)
3. Mr.Lokesh (Safai Karamchari)
4. Ms.Roshni (Safai Karamchari)
5. Mr.Mange Ram (Safai Karamchari)
6. Mr.George Masih (Safai Karamchari)
7. Mr.Kunwar Singh (Safai Karamchari)
8. Mr.Paras Chand Rana (Safai Karamchari)
9. Mr.Paramjeet (Chowkidar)
10. Mr.Ramesh (Mali)
11. Mr.Suresh Kumar (Mali)
12. Mr.Ashok Kumar (Mali)
13. Mr.Santosh Kumar Tiwari (Office Attendant)
14. Mr.Naveen Singh (Office Attendant)

Sd/-
Dr.Anupa Siddhu”

12. Responding to the additional affidavit, Dr.Anupa Siddhu, Principal-cum-Director of the college has explained

Annexure P-7 by stating that a group called Group-S4, concerned with recruitment and employment, had some vacancies. That she knew the said group and with a view to provide alternative jobs to not only the petitioners but the other similarly situated employees she had sent out the handwritten note Annexure P-7.

13. Surprisingly enough, in her additional affidavit Dr.Anupa Siddhu has not explained Annexure P-8 filed by the petitioners along with the rejoinder affidavit.

14. Petitioners have responded to the additional affidavit filed by Dr.Anupa Siddhu responding to the petitioners' averments in the rejoinder affidavit. To put it briefly, in the said additional affidavit filed in response to the additional affidavit filed by the Principal of the College further documents have been annexed showing that salary and wages are being paid to the persons employed vide order dated 8.6.2005 annexed as Annexure P-8 to the rejoinder affidavit filed by the petitioners.

15. The factual narration of the relevant facts herein above noted prima facie establishes an attitude of highhandedness and hire & fire being adopted in the respondent No.2 college. It is interesting to note that when services of the petitioners were dispensed with the erstwhile principal had retired and a new principal Dr.Anupa Siddhu had

taken over.

16. It smells of nepotism. It gives rise to a grave suspicion that the new principal wanted to create her own fiefdom.

17. Why I say so?

18. Annexure P-8 filed by the petitioners along with the rejoinder affidavit has not been explained by the principal of the college when she filed the additional affidavit on 24.3.2007 responding to the pleas urged in the rejoinder affidavit. As noted herein above, the principal of the college explained Annexure P-7, the hand-written note issued by her on 7.6.2005. She had an opportunity to explain Annexure P-8, the order dated 8.6.2005. She has explained why 14 persons were employed at daily wage basis to various posts in the college.

19. I am conscious of the fact that out of 14 persons appointed on daily wage basis 5 were employed as safai karamcharis, 4 were employed as chowkidars, 3 as gardeners and 2 as office attendants and that not all petitioners were employed to said posts. But, Smt.Kamlesh, Gian Chand, Lokesh Kumar, Radhey Shyam, all petitioners were working as safai karamcharis when their services were dispensed with. Similarly, Sushila Devi, another petitioner was deployed as a gardener. Further, petitioner Kanwar Singh was deployed as a chowkidar and petitioner Santosh Kumar Tiwari was deployed

as an office attendant. At least, said petitioners could have been continued in services if not other petitioners who were employed as laboratory attendant, library attendant and hostel helper.

20. In the decision reported as JT 2007 (12) SC 179 UP State Electricity Board vs. Puran Chandra Pandey, a Division Bench of the Hon'ble Supreme Court cautioned the Courts that its decision in Umadevi's case (supra) has not be applied mechanically as if it were a Euclid's formula. The Hon'ble Supreme Court cautioned the Courts that individual facts of each case has to be seen.

21. In said decision, Hon'ble Supreme Court drew attention to its earlier decision reported as AIR 1978 SC 597 Maneka Gandhi vs. UOI which held that reasonableness and non-arbitrariness is a part of Article 14 of the Constitution of India and that there could not be arbitrariness in State action. The Hon'ble Supreme Court noted that Maneka Gandhi's case (supra) did not deal with the issue of regularization of services of employees, but held that the principle of reasonableness in executive action is of general application.

22. What more unreasonableness can be found in the action of the principal of the college who disengaged the petitioners on the plea that their employment by the erstwhile principal was in violation of the directive issued by UGC on

31.8.1999 and that there were no posts against which petitioners were employed. Surprisingly enough, within about an year, on 8.6.2005, during pendency of the instant writ petition, 14 persons were re-engaged as daily wagers. I repeat, in spite of availing an opportunity the principal has not explained the circumstances under which she issued the office order dated 8.6.2005

23. It is obviously a case of resorting to hire and fire. It is a case where the UGC directive is being used as a shield to non-suit the petitioners but at the same time give employment to other persons.

24. In the decision reported as 1992 (4) SCC 118 State of Haryana vs. Piara Singh, the Hon'ble Supreme Court noted with regret that ad-hoc, casual and daily wage employment had given rise to back-door entries in employment for monetary consideration. This was the reason, in said decision, the Hon'ble Supreme Court laid emphasis on employment being resorted to by notifying applications from the name registered with the employment exchange and by public notice.

25. Instant case shows that the malady noted by the Hon'ble Supreme Court in Piara Singh's case (supra) continues to plague public employment. Annexure P-8 is a living example thereof.

26. I see no reason why safai karamchari's, chowkidars, malis and office attendant taken on daily wage basis on 8.6.2005 should continue at the cost of the petitioners who had been employed in the college but by the erstwhile principal.

27. Unfortunately, neither counsel could throw much light on the fate of the 14 persons employed vide Annexure P-8.

28. The petitioners would thus be entitled to the minimum relief that henceforth, whenever the college requires additional hands on daily wage, ad-hoc or temporary basis first offer would be made to the petitioners and only in the event petitioners refuse the same would the college resort to employment of any other person.

29. In the facts and circumstances of the case I hold that the petitioners would be entitled to cost which I assess in sum of Rs.10,000/-. Cost shall be paid by the second respondent.

(PRADEEP NANDRAJOG)
JUDGE

July 28, 2008
dk”