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IN THE HIGH COURT OF DELHI

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WP(C) No.9942/2006

Virender Singh Negi Petitioner
through: Nemo

VERSUS

University of Delhi & Anr. Respondent
through: Mr.Anurag Mathur, Adv. for
respondent No.1
Ms.Maldeep Sidhu, Adv. for
respondent No.2

WP(C) No.8221/2006

Naresh Kumar Petitioner
through: Mr.Sanjay Ghose, Adv. with
Ms.Neelam, Adv.

VERSUS

University of Delhi & Anr. Respondent
through: Mr.Anurag Mathur, Adv. for
respondent No.1
Ms.Maldeep Sidhu, Adv. for
respondent No.2

WP(C) No.8222/2006

Brijesh Kumar Petitioner
through: Mr.Sanjay Ghose, Adv. with
Ms.Neelam, Adv.

VERSUS

University of Delhi & Anr. Respondent
through: Mr.Anurag Mathur, Adv. for
respondent No.1
Ms.Maldeep Sidhu, Adv. for
respondent No.2

RESERVED ON:
07.07.2008

DATE OF DECISION:
10.07.2008

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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. Petitioners, Virender Singh Negi, Naresh Kumar and Brijesh Kumar have approached this Court by 3 different petitions but have predicated their stand on near similar pleas. All 3 pray that letter dated 1.4.2006 issued by Ramjas College appointing them on purely contractual basis for a period of one year to the post in Central Computer Laboratory, (offered to Virender Singh Negi and Naresh Kumar) and the post in the Internet Section offered to Brijesh Kumar be quashed for the reason, they allege mala fide in dispensing their service taken on ad-hoc basis as Laboratory Attendants in the regular pay scale.

2. Virender Singh Negi alleges that his father died in the year 2000 and on compassionate basis, with an assurance that he would be regularly absorbed, he was appointed as a Laboratory Attendant on ad-hoc basis. He alleges that he continued to work as a Laboratory Attendant on ad-hoc basis and drew his salary under the grade applicable to the post of Laboratory Attendant till the offending letter was issued to him. Petitioner, Naresh Kumar also asserts that his father died in the

year 2000 and that he was, on compassionate grounds, with an assurance of subsequent regularization, offered the post of a Laboratory Attendant on ad-hoc basis and that he worked pursuant thereto till the offending letter was issued. He also claims that while working on ad-hoc basis as a Laboratory Attendant he was given wages in the grade applicable to the post of a Laboratory Attendant. Petitioner, Brijesh Kumar claims that his father took voluntary retirement from the College in October, 2001, being a patient of cancer, with an assurance that petitioner would be appointed in the College. He asserts that on said understanding he joined as a ad-hoc Laboratory Attendant under the College with an assurance that his services would be regularized.

3. All petitioners assert that persons who had joined after them on ad-hoc basis, namely, Shikha Bhatia, Dhruv Narayan, Vijay Dhanya, Ram Raj Pal and Gopal Singh Bangari have been regularized as permanent employees by the College.

4. In a nutshell, petitioners firstly allege discrimination. They further allege a right of permanent absorption under the policy of compassionate appointment.

5. In the response filed by the college it is stated that the petitioner Virender Singh Negi was appointed as a Laboratory Attendant in the Department of Botany on purely ad-hoc basis and that the other 2 petitioners were appointed as Laboratory Attendant in the Department of Chemistry purely on ad-hoc basis

without any assurance that their services would be regularized. It is denied that any assurance of employment under the scheme of compassionate employment was ever given to the petitioners. It is further asserted that the Government of India instructions pertaining to compassionate appointment were directed to be followed by a notice to the University of Delhi as per directive issued by the University Grants Commission and that as per letter No. Estab. II(i)/2000/Delhi-7 dated 24.4.2000 attention was drawn to an office order dated 28.12.1999 issued by the Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, UOI which clearly mandated that where there are less than 20 direct recruitments, they may be grouped together and out of total number of vacancies, 5% may be filled up on compassionate basis, subject to the condition that appointment on compassionate grounds in such posts should not exceed one. It is stated that employees had already been appointed on compassionate grounds and there was no possibility to fill any further post on compassionate grounds.

6. Pertaining to Naresh Kumar and Brijesh Kumar it is further informed that their elder brothers are appointed on permanent basis in the College and are drawing the salary in excess of Rs.10,000/- per month. It has further been informed that family pension is being paid to the families of Virender Singh Negi and Naresh Kumar and pension is being paid to father of Brijesh Kumar.

7. Pertaining to appointment of Shikha Bhatia, Dhruv Narayan, Vijay Dhanya, Ram Raj Pal and Gopal Singh Bangari it is stated that a post of Junior Assistant in the office, one post of Laboratory Attendant in the Department of Zoology, and 3 posts of Office Attendants in the office were notified. Applications were invited from all eligible candidates. That petitioners did not respond to the said notice inviting applications. Shikha Bhatia, Dhruv Narayan, Vijay Dhanya, Ram Raj Pal and Gopal Singh Bangari applied. Even others did. A Selection Committee was constituted. Being empanelled, Shikha Bhatia was appointed as a Junior Assistant in the office. Dhruv Narayan was appointed as a Laboratory Attendant in the Department of Zoology. Vijay Dhanya, Ram Raj Pal and Gopal Singh Bangari were appointed as Office Attendants.

8. It may be noted that the petitioners have not filed a rejoinder controverting the averments made by the College in the counter affidavits filed in the 3 writ petitions.

9. Pertaining to the plea raised by all petitioners that they are entitled for appointment on compassionate grounds, suffice would it be to state that as held by their Lordships of the Hon'ble Supreme Court in the decision reported as AIR 1994 SC 2148 LIC Vs. Asha Ram Chander Ambekar this Court cannot direct the appointment on compassionate grounds. The Court can merely direct consideration of the claim as per the policy of compassionate appointment.

10. No doubt, where a person is wrongfully denied a claim, the taint can be removed by directing the respondent to reconsider the matter after ignoring the material found tainted by the Court. Thus, the decision pertaining to compassionate appointment can be looked into by a court within the parameters of the policy of compassionate appointment.

11. Compassionate appointment is not an alternative channel of appointment. The ethos of compassionate appointment is to provide immediate succor and relief to the family of an employee who dies in harness and the family faces financial crisis due to the death of sole bread winner. This aspect was brought out with clarity by the Hon'ble Supreme Court in the decision reported as 1994 (4) SCC 138 Umesh Kumar Nagpal Vs. State of Haryana.

12. On this short ground alone, neither petitioner would be entitled to be appointed on compassionate basis for the reason family pension is being paid to 2 families i.e. the families of Virender Singh and Naresh Kumar. Brijesh Kumar's father is receiving pension in his own right. Further, undisputably the elder brothers of Virender Singh and Naresh Kumar are in employment of the College and are being paid monthly wages in excess of Rs.10,000/-. The families are not facing financial crisis.

13. Even otherwise, the claim for compassionate appointment has to be confined to the policy pertaining to compassionate appointment. If there is a cap on the number of

posts which can be filled up on compassionate appointment, the employer cannot be compelled to fill more posts in the quota. As noted hereinabove, stand of the College that all posts within the quota of compassionate appointment stand filled up has not been controverted by the petitioners.

14. Thus, looked at from any angle, no case is made out to direct the College to give employment to the petitioners on regular basis under the compassionate appointment policy.

15. Pertaining to plea of discrimination vis-a-vis Shikha Bhatia, Dhruv Narayan, Vijay Dhanya, Ram Raj Pal and Gopal Singh Bangari, suffice would it be to state that said persons responded to the advertisement issued by the College and underwent the process of regular selection. For unexplainable reasons, the petitioners chose not to respond to the advertisement inviting applications for eligible candidates for being appointed on regular basis.

16. I find no mala fide in offering contractual appointment to the petitioners for the reason, as noted above, the posts to which contractual appointment is offered are not the posts of Laboratory Attendants. As noted above, the petitioners have been offered contractual appointment in the Central Computer Laboratory and the Internet Section.

17. As explained at the Bar by learned counsel for the College, this has been so done pending creation of regular posts in the Internet Section and the Central Computer Laboratory.

18. Before concluding, I may note that merely because somebody has worked on ad-hoc basis under an employer would not be a ground for regularization of his service. A Constitution Bench of the Hon'ble Supreme Court has so held in the decision reported as 2006 4 SCC 1 Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.

19. It has to be noted that in the instant case neither petitioner has undergone the process of regular selection.

20. The petitions are dismissed.

21. No costs.

10th July, 2008
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(PRADEEP NANDRAJOG)
JUDGE