

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

% **Date of Decision : November 24, 2008**

+ **WP(C) No.5097 of 2007**

# RAM PRAKASH. Petitioner

! Through : Mr.Sanjeev Joshi, Advocate

**Versus**

\$ DELHI UNIVERSITY & ANR. Respondents

^ Through : Ms.Maninder Acharya, Adv. for respondent  
No.1  
Mr.S.K.Luthra, Adv. for respondent No.2

**CORAM :**

**HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

**S.N. Aggarwal, J.**

The petitioner was appointed as Junior Assistant in the Accounts Branch of Respondent no. 2 college on 17.02.2003 for four months on contractual basis on a consolidated pay of Rs.7000/- per month. This term of four months for which he was initially appointed was extended for another six months vide respondent no. 2's letter dated 04.07.2003. Thereafter, he was given ad hoc appointment to the post of Junior Assistant in respondent no. 2 college for a period of 89 days at a basic pay of Rs. 3050/- per month plus usual allowances as admissible under the Rules vide

letter of respondent no. 2 college dated 19.11.2003. The ad hoc appointment so given to the petitioner was extended from time to time by various orders passed by respondent no. 2 college till almost the end of year 2006. The extension for ad hoc appointment was given from time to time, each time for 89 days, after break of 1-3 days at the time of each such extension. The governing body of respondent no. 2 college in its meeting held on 04.12.2006 resolved to regularize the services of the petitioner in respondent no. 2 college on the post of Junior Assistant w.e.f. 01.01.2007 subject to the approval of the University of Delhi/University Grants Commission and accordingly, the petitioner was informed about the decision of the governing body by the Principal of respondent no. 2 college vide letter dated 05.12.2006 (Annexure P-17 at page 41 of the Paper Book). Since the respondent no. 2 college did not get approval to the decision of the governing body for regularizing the petitioner in the service of respondent no. 2 college, the petitioner was again appointed on ad hoc basis in the Accounts Branch of respondent no. 2 college for a period of 89 days w.e.f. 02.04.2007 to 29.06.2007 or till the post is filled on a permanent basis at a basic pay of Rs. 3050/- per month plus usual allowances as admissible under the Rules vide letter dated 29.03.2007 of respondent no. 2 college (Annexure P-1 at page 24 of the Paper Book). The petitioner is aggrieved by his said ad hoc appointment vide the above referred letter dated 29.03.2007 and has, therefore, filed the present writ

petition seeking issuance of a writ of mandamus or any other appropriate writ, quashing and setting aside the impugned order dated 29.03.2007 with consequential benefits.

2. The claim of the petitioner is that since his services on the post of Junior Assistant in respondent no. 2 college have been regularized by the governing body of respondent no. 2 college w.e.f. 01.01.2007, the impugned order dated 29.03.2007 appointing him on ad hoc basis for 89 days is in contradiction with the decision of the governing body. The present writ petition was filed by the petitioner on 24.07.2007 and during the pendency of the present writ petition, the ad hoc appointment of the petitioner was extended by respondent no. 2 college up to 29.09.2007. Thereafter, he was not granted any further extension and consequent thereto, he is now no more in service of respondent no. 2 college. The petitioner had filed a miscellaneous application, being CM No. 1668/2008 for directions to respondent no. 2 college that he should be allowed to resume his duties in the college but his said application was dismissed on merits vide order passed by this court on 04.02.2008.

3. At the hearing of this writ petition, Mr. Joshi, learned counsel appearing on behalf of the petitioner, argued that since the governing body of respondent no. 2 college in its meeting held on 04.12.2006, had resolved to regularize the services of the petitioner w.e.f. 01.01.2007, the petitioner should be deemed to have continued in the service of respondent no. 2 college and according

to the learned counsel, there was no need for the respondent to have passed the impugned order dated 29.03.2007 appointing the petitioner on ad hoc basis for a period of 89 days w.e.f. 02.04.2007 to 29.06.2007. Mr. Joshi had further argued that in terms of Ordinance XX of the University of Delhi, the governing body of respondent no. 2 college had full power to make the appointment of the administrative staff in the college and in support of his said argument, he has relied upon the extract of Ordinance XX annexed as Annexure P-19 at page 43 of the Paper Book. Mr. Joshi had submitted that since the petitioner is unemployed, necessary directions be given by this court to the respondents to allow the petitioner to resume his duties as Junior Assistant in respondent no. 2 college immediately as according to him, he is deemed to have continued in the service of the college in view of the decision of the governing body communicated to the petitioner vide letter dated 05.12.2006 (Annexure P-17 at page 41 of the Paper Book).

4. Per contra, Mr. S.K. Luthra, appearing on behalf of the college and Ms. Maninder Acharya appearing on behalf of the University have taken a common stand that the recommendations of the governing body for regularizing the petitioner to the post of Junior Assistant in the college is de hors the Recruitment Rules and the Statute and Ordinance of the University. It was argued by counsel for the respondents that the recommendations of the governing body were even otherwise subject to the approval of the

University/UGC and according to them, since the requisite approval for regularizing the service of the petitioner in the college was not granted either by the University or the UGC, the recommendations of the governing body cannot be given effect to. It was further submitted by them that the regularization of the service of the petitioner in terms of recommendations of the governing body is even otherwise opposed to the constitutional scheme envisaged in Articles 14 and 16 of the Constitution. It was submitted that since the petitioner was initially appointed in the college on contractual basis at a fixed amount of Rs.7000/- per month only for four months, his entry in the college was a back door entry without following the due procedure of selection and the same cannot be given a legal sanction by directing the respondents to regularize him in the service of the college as it would deprive the eligible candidates aspiring for their appointment in the college against the vacant post of Junior Assistant. It was, therefore, contended that the present petition should be dismissed with costs.

5. I have given my anxious consideration to the above rival arguments advanced by learned counsel for the parties and have also gone through the entire case file carefully.

6. It is an admitted fact that the petitioner got his entry in the respondent no. 2 college by way of his appointment to the post of Junior Assistant-cum-Typist in its Accounts Branch on contractual basis for four months. He was engaged by respondent no. 2 college

at a fixed pay of Rs.7000/- per month. His contractual appointment was extended by another six months and thereafter, he was appointed on ad hoc basis for 89 days. His term of ad hoc appointment was extended from time to time by 89 days each time after a gap of 1-3 days in every such extension. He had hardly worked for about four years including the term of his contractual appointment and that of his ad hoc appointment when the governing body of respondent no. 2 college in its meeting held on 04.12.2006 resolved to regularize the services of the petitioner in respondent no. 2 college w.e.f. 01.01.2007. The decision of the governing body to regularize the services of the petitioner in respondent no. 2 college was communicated to the petitioner by the Principal of respondent no. 2 college vide letter dated 05.12.2006. The governing body is stated to have acted upon the recommendations of two-member committee appointed by the Chairman of the governing body to examine the work and conduct of the petitioner and to consider his case for regularization. The recommendations of the governing body to regularize the petitioner in respondent no. 2 college was subject to the approval to be obtained from the University/UGC. Admittedly, the approval for regularizing the petitioner in the service of respondent no. 2 college was not granted, either by the University or by the UGC and, therefore, the respondent no. 2 college had no option but to pass he impugned order dated 29.03.2007 again appointing the petitioner to

the post of Junior Assistant on ad hoc basis for a period of 89 days w.e.f. 02.04.2007 to 29.06.2007 or till the post is filled on a permanent basis. It is this order which is challenged by the petitioner in the present writ petition on the ground that since he already stood regularized to the post of Junior Assistant in respondent no. 2 college in terms of the decision of the governing body of 04.12.2006, he could not have been appointed again on ad hoc basis.

7. It is not disputed that the respondent no. 2 college is an affiliated college of Delhi University which is a statutory body created and constituted under the Delhi University Act. The respondent no. 2 college was established by Delhi Administration and is funded by Delhi Administration to the extent of 5% and the remaining 95% is funded by the University Grants Commission (UGC). The respondent no. 2 college by virtue of its affiliation with the Delhi University is required to follow the rules and regulations of the University of Delhi applicable to colleges affiliated to it as well as it is required to follow the rules and regulations and the directions framed by the University Grants Commission as this college is primarily funded by the UGC on account of its affiliation with the Central University, i.e., University of Delhi. The rules applicable to the petitioner, as framed by the University, are known as University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971. Rules 4 and 6 of Chapter II Section I – General Conditions of

Service – deal with the appointment of non-teaching staff. Rules 4 and 6 are reproduced herein below :-

“(4) Methods of Recruitment :

Recruitment to the post may be made :

- (i) by direct recruitment;
- (ii) by promotion; and
- (iii) by appointment of employees borrowed from Government Departments and other Institutions.

(6) Appointments :

- (i) Appointments to the posts shall be made by the Executive Council on the recommendations of Selection Committees appointed for the purpose from time to time.
- (ii) The age, educational and other qualifications for appointment to the post and the methods of recruitment shall be as prescribed by the Executive Council from time to time;

Provided that the Rules laid down by the Government of India for reservation of certain percentage of posts in respect of candidates belonging to Scheduled Castes, Scheduled Tribes and Ex-servicemen shall apply *mutatis Mutandis* to such posts as are to be filled by direct recruitment.”

8. It may further be noted that the Executive Council of University of Delhi had passed a resolution bearing No. 183 dated 13.11.1998 which provide for the mode, procedure and qualification for the post of Junior Assistant and his promotion to the post of Assistant. The said resolution is stated to have been circulated by the University of Delhi vide letter dated 30.06.1999 to all colleges affiliated to it for

information and compliance. The respondent no. 2 college has annexed the copy of the said resolution dated 30.06.1999 with its counter affidavit as Annexure R-1 at pages 115-121 of the paper book. A perusal of the above referred resolution passed by the Executive Council of University of Delhi and made applicable to the colleges affiliated to the University, would show that the method of recruitment to the post of Junior Assistant in the colleges was specifically provided therein to be strictly followed by all the colleges.

9. In terms of Rule 4 of University Non-Teaching Employees (Terms and Conditions of Service) Rules, 1971, referred above, the recruitment to the non-teaching post can be made either by direct recruitment or by promotion or by way of deputation. The rules nowhere provide for regularization of an ad hoc or a contractual employee. Rule 6 on which heavy reliance was placed by counsel for the petitioner, provides that the governing body of the college can make appointment to the non-teaching posts on the recommendations of the selection committee appointed for the purpose from time to time. It appears from the minutes of the governing body of the meeting held on 04.12.2006 (Annexure P-22 at page 63 of the paper book) that the governing body had acted upon the recommendations dated 23.11.2006 of a two-member committee comprising of Mr. G.L. Aggarwal, Treasurer and Professor J.L. Jain, appointed by the Chairperson of the governing body to

study the cases of Mr. Kishan Kumar and of Mr. Ram Prakash Singh (petitioner herein) for their regularization. Whether this two-member committee appointed by the Chairperson of the governing body was a selection committee in terms of the recruitment rules? It may be noted that both the members of this committee at the relevant time were also the members of the governing body. The petitioners in his written arguments filed in the matter has himself given the composition of the selection committee for the recruitment of JACT which according to him was to be as under :-

- i) Principal
- ii) Nominee of the Chairman, governing body
- iii) Superintendent (Admn./Accounts) (to be decided by the Principal)

10. The two-member committee, on whose recommendations the governing body has acted, did not have the Principal or the Superintendent (Admn./Accounts) of the college as members of the said committee and, therefore, the decision of the governing body to regularize the petitioner in the service of respondent no. 2 college was not on the basis of the recommendation of the selection committee in terms of Rule 6 referred above. There was a clear violation of Rule 6 on the part of the governing body in recommending the petitioner for his regularization in respondent no. 2 college. Further more, the recruitment to the post of Junior Assistant in respondent no. 2 college could take place either by

direct recruitment or by promotion in terms of Rule 4 quoted above. Regularization of an ad hoc or a contractual employee does not fall within the ambit of direct recruitment or promotion and, therefore, there was violation of Rule 4 also in recommending the petitioner for his regularization by the governing body. The guidelines contained in resolution no. 183 dated 13.11.1998 passed by the Executive Council of the University which were circulated for compliance to all its affiliated colleges (Annexure R-1 at page 115 of the paper book) would show that the appointment to the post of Junior Assistant in respondent no. 2 college either by direct recruitment or by promotion could take place only by way of written examination in four papers to be followed by Aptitude Test. The entry of the petitioner in respondent no.2 college on 17.02.2003 was on contractual basis for four months though it was extended from time to time till the governing body of respondent no. 2 college resolved in its meeting held on 04.12.2006 to regularize the services of the petitioner w.e.f. 01.01.2007. His entry in respondent no. 2 college was, therefore, a back door entry. He did not come through a regular selection process. Vacancies were not advertised by the respondents. It deprived a large number of candidates for their consideration for appointment against the vacant post of Junior Assistant in respondent no. 2 college and regularization of such people who make their entry through back door is not legally permissible. The recommendations of the governing body for

regularization of petitioner in respondent no. 2 college was de hors the rules. The Constitution Bench of the Supreme Court has held in the case of Secretary, State of Karnataka & Ors. Versus Uma Devi & Ors. (2006) 4 SCC 1 that the appointment made without following the due process or the rules for appointment, does not confer any right on such appointees and the court cannot direct their absorption or regularization or re-engagement or making them permanent. It was further held by the Supreme Court in the said case that the decisions which run counter to the principle laid down in the said case or in which directions running counter to what has been held therein, will stand denuded of their status as precedent. It was categorically held by the Hon'ble Supreme court in Uma Devi's Case (supra) that all contractual appointments come to an end at the end of the contract and that a contractual appointee or a person appointed on ad hoc basis cannot claim for regularization.

11. The Supreme Court of India, in the case of Municipal Corporation, Jabalpur Versus Om Prakash Dubey AIR 2007 SC 893, has considered the distinction between “irregular appointment” and “illegal appointment” and relying upon its earlier decisions, clarified that the distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one;

whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to.

12. In the present case, the petitioner was admittedly appointed on ad hoc basis de hors the rules and the decision by the governing body to regularize his services was taken subject to certain conditions also de hors the rules. The initial appointment of the petitioner was illegal as well as the alleged regularization was also illegal. The illegal appointment as per the decision of the Supreme Court in Uma Devi's Case (supra) does not confer any right for his regularization upon the petitioner.

13. Even if for a moment, we presume in favour of the petitioner that the decision of the governing body recommending him for regularization was binding in terms of Rule 6, still the same will be of no help to the petitioner because the decision of the governing body to regularize him was subject to approval of the University/UGC. Admittedly, the University and UGC did not accord approval to the decision of the governing body and for that reason also, the recommendations of the governing body lose its sanctity. Under the circumstances, I have no hesitation in holding that the petitioner has no case for his regularization in terms of the recommendations of the governing body because the said recommendations are de hors the recruitment rules and the

constitutional scheme.

14. In view of the above, I do not find any merit in this writ petition which fails and is hereby dismissed leaving the parties to bear their own costs.

**S.N. AGGARWAL  
JUDGE**

**NOVEMBER 24, 2008**  
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