

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

+ **WP (C) Nos. 5425/2000**

% Judgment delivered on: 13.03.2009

Anand Prakash Sharma Petitioner
Through: Mr. Rajehswar Gupta, Adv.

versus

Maharaja Agrasen College & Ors. Respondents
Through: Mr. Amit Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J. (Oral)

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1. By this writ petition filed under Articles 226 and 227 of the Constitution of India the petitioner seeks quashing and setting aside of the verbal termination order of respondent No. 1 being illegal and arbitrary and in violation of the fundamental rights of the petitioner. The petitioner also seeks directions to direct the respondents to take

the petitioner back on his duty with continuity in service, without any break and with full backwages till the date of reinstatement.

2. Brief facts of the case as set up by the petitioner in the present case are:-

3. The petitioner appeared in the Tenth examination from the Madhyamik Shiksha Parishad, Uttar Pradesh in the year 1990 and successfully passed the same in Second Division. Thereafter the petitioner got himself registered with the Employment Exchange, Curzon Road, New Delhi vide registration No. DC/3117/93. Having come to know that there are some vacancies lying vacant for the post of Junior Assistant in the office of respondent No. 3, the petitioner applied for the same. Along with the application, the petitioner also enclosed a copy of the matriculation certificate issued by the Madhyamik Shiksha Parishad, Uttar Pradesh. On the basis of the said application as well as Matriculation Certificate, the petitioner was called for the typewriting/computer test and on qualifying the same, he was called for viva voce in which also the petitioner also came successful. Thereafter, the petitioner was appointed as Junior Assistant cum Typist in the basic pay of Rs. 950/- in the pay scale of Rs. 950-1500 on 5th September, 1997 for a period of three months.

Thereafter, vide letter No. MAC/97-98/959 dated 4th December, 1997, the services of the petitioner were dispensed with effect from 4th December, 1997 (afternoon). Thereafter vide letter No. MAC/97-98/967 dated 6th December, 1997, the services of the Petitioner were dispensed with effect from 4th December, 1997 (Afternoon). Thereafter, vide letter No. MAC/97-98/967 dated 6th December, 1997, the petitioner was again appointed as Junior Assistant cum Typist for a period of three months from 6th December, 1997. Vide letter No. MAC/97-98/1155 dated 5th March, 1998, the services of the Petitioner were dispensed with after completion of three months with effect from 5th March, 1998 Afternoon. The petitioner was again appointed as Junior Assistant cum Typist for a further period of three months with effect from 7th March, 1998 vide letter No. MAC/97-98/1710. Thereafter vide letter No. MAC/98-99/218 dated 6th June, 1998, the services of the Petitioner were dispensed with effect from 6th June, 1998 Afternoon. Vide letter No. MAC/98-99/220 dated 8th June, 1998, the petitioner was issued with an offer of appointment for a period of three months for the post of Junior Assistant cum Typist. Thereafter, vide letter No. MAC/98-99/415 dated 7th September, 1998, the services of the petitioner were dispensed with effect from 7th

September, 1998. Vide letter No. MAC/98-99/420 dated 9th September, 1998, the petitioner was offered an appointment for the post of Junior Assistant cum Typist with effect from 9th September, 1998 for a period of three months. Thereafter vide letter No. MAC/98-99/831 dated 8th December, 1998 the services of the petitioner were dispensed with effect from 8th December, 1998 After noon. Thereafter after a day's break, the petitioner was again appointed as Junior Assistant cum Typist for a further period of three months with effect from 10th December, 1998 vide letter No. MaC/98-99/836. Thereafter, after completion of three months, the services of the petitioner were dispensed with effect from 23rd February, 1999 vide letter No. MAC/98-99/1016A dated 22nd February, 1999. Thereafter again vide letter No. MAC/99-2000/59 dated 5th April, 1999, the petitioner was appointed as Junior Assistant cum Typist for a period of three months with effect from 5th April, 1999. As usual, the services of the petitioner were dispensed with after completion of three months with effect from 3rd July, 1999 Afternoon vide letter No. MAC/1999-2000/874 dated 3rd July, 1999. Thereafter with effect from 5th July, 1999, the petitioner was given an appointment for a period of three months as Junior Assistant cum Typist vide letter No.

MAC/1999-2000/275 dated 5th July, 1999. Before completion of three months on 5th October, 1999, the petitioner was asked by the Principal, Maharaja Agrasen College, not to sign the Attendance Register and was made to work for one week from 11th September, 1999 to 11th September, 1999 on which date he was asked not to come any more by virbal direction. Aggrieved with the said verbal order of termination of services the present petition has been preferred by the petitioner.

4. Mr. Rajeshwar Gupta, counsel appearing for the petitioner submits that the petitioner was appointed on the post of Junior Assistant-cum-typist w.e.f. 5th September, 1997 for a period of three months and thereafter except for some artificial breaks he remained in service on the said post till 5th October, 1999. On 5th October, 1999 the petitioner was verbally asked by the Principal of respondent No. 1 not to sign attendance register, but was still made to work till 11th October, 1999. Mr. Rajeshwar Gupta, counsel further submits that the petitioner was appointed against a sanctioned vacancy for the post of Junior Assistant-cum-Typist and he was even granted regular pay scale of Rs. 3050-75-3950-80-4590 as would be evident from the letter dated 9th September, 1998. Counsel further submits that although a

regular vacancy against a sanctioned post existed with respondent No.1, but still as a ploy the petitioner was being given temporary employment for three months period each with artificial breaks and such conduct on the part of respondent No. 1 would show that deliberately the petitioner was deprived to be appointed on permanent basis against the regular vacancy. Counsel thus submits that such action on the part of respondent No.1 is not only arbitrary, but blatant violation of the fundamental rights of the petitioner besides being in violation of the principle of natural justice. Counsel for the petitioner further submits that the petitioner had worked for more than 240 days and therefore, he is also entitled to protection under Section 25F of the Industrial Disputes Act and admittedly the respondent had not followed the mandate of Section 25F of the Industrial Disputes Act before terminating the petitioner from his service. Counsel for the petitioner further submits that a detailed representation was sent by the petitioner vide representation dated 1st November, 1999, but he was informed that further engagement was not given to the petitioner on account of the fact that he had submitted forged certificate of matriculation. Counsel for the petitioner further submits that prior to this the respondent never

raised such complaint against the petitioner rather there was no complaint of any nature whatsoever against the petitioner during his entire tenure of service. In support of his arguments counsel for the petitioner placed reliance on the following judgments:-

1. **Management of M.C.D. vs Prem Chand Gupta & Anr. 1999 X AD (S.C.) 371.**
2. **Dinesh Kumar Himatlal Nimavat vs State of Gujarat and Anr. 1998 (1) SLR 84**
3. **The Zilla Parishad, Nagpur and Anr. Vs Moreshwar S/o Vithobaji Mendhekar and Anr. 2004 Lab. I.C. 2505**
4. **V. Jayaramaiah and Anr. Etc. etc. vs Director, Sri Venkateswara Institute of Medical Sciences, Tirupati 2004 (7) SLR 311**
5. **Haryana Financial Corporation vs Presiding Officer 2004 Lab I.C. 4387**
6. **Div. Manager, New India Assurance Co. Ltd. vs A. Sankaralingam Civil Appeal No. 4445/2006 dated 3.10.2008**
7. **Ratanlal and Ors. Vs State of Haryana and Ors. AIR 1987 SC 478.**

5. Counsel for the petitioner has specifically drawn attention of this Court to the judgment of the Apex Court passed in Civil Appeal No. 4445/2006 dated 3.10.2008 to support his argument that even a part time employee is entitled for protection under Section 25F of the Industrial Disputes Act.

6. Refuting the said submissions, counsel for the respondents on the other hand submits that respondent No. 1 is a college of University of Delhi, which is a statutory body created under the Delhi University Act. It is further submitted by the counsel that in order to carry out the function of the college, some time it becomes necessary to engage various employees on temporary/ad hoc basis till the time the regular appointments under the rules and regulation are made. The contention of the counsel for the respondent is that the petitioner was one such employee who was appointed purely on temporary/ad hoc basis from time to time pending regular selection. Counsel for the respondent further submits that as per the terms and conditions of the appointment of the petitioner his services were purely temporary terminable at the end of the said temporary period of three months. As regards various extensions granted by respondent No. 1 to the petitioner, the counsel submits that the said extensions were being

given keeping in view the requirement of the petitioner for engagement of his services for the said temporary period. Contention of counsel for the respondent is that the petitioner cannot claim right over his appointment simply because of the fact that he was being given various extensions, which was solely depending on the exigencies of the work and need of respondent No. 1 to engage the services of the petitioner for the said temporary period. Counsel for the respondent further submits that in February, 1999 the service of the petitioner were dispensed w.e.f. 23rd February, 1999 whereafter he was appointed again on 5th April, 1999 after a gap of about more than 40 days, which would mean that artificial breaks were not for small periods. Counsel for the respondent also pointed out that the petitioner gave a false explanation for not being able to join during the long gap by stating that during the said period he was hospitalized in St. Stephan hospital. From the medical certificate placed on record by the petitioner, it is manifest that he was in the hospital for the period w.e.f. 11.2.1999 till 19.2.1999 during which period he was already in the employment of respondent No. 1. Counsel further submits that once the petitioner was not appointed against any sanctioned vacancy under the rules and regulations of respondent No.

1, he cannot claim any vested right over the said post of Junior Assistant-cum-Typist. In support of his argument, counsel for the respondent placed reliance on the judgment of the Apex Court in **Secretary, State of Karnataka & Ors. Vs Umadevi & Ors. AIR 2006 SC 1806.**

7. I have heard learned counsel for the parties and perused the record.

8. The issue is no more res integra with the authoritative pronouncement of the Apex Court in **Umadevi's case (supra)**. It is now well settled that an appointment made on probation/ad-hoc basis/contractual basis/temporarily for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. The petitioner has not placed any document on record to show that he was appointed on the post of Junior Assistant-cum-typist against any regular vacancy or against any sanctioned post or pursuant to any advertisement issued in this regard by respondent No. 1 inviting application for appointment on the post of Junior Assistant-cum-typist against regular vacancy. No doubt that once a regular vacancy exists the practice of Government Authorities appointing persons on temporary basis with this periodical

extension has to be deprecated yet, however, the Apex Court in **Umadevi's case (supra)** has clearly held that such temporary extension cannot come to the rescue of such an employee to claim legitimate expectation to be appointed on regular basis on such post. Para 38 of the judgment of the Apex Court are reproduced as under:-

“38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

9. Indisputably the petitioner was initially given appointment on the said post for a period of three months and on which post he was given certain extensions. Merely because of the fact that the petitioner was given certain extensions on the said post cannot give any right to the petitioner to claim appointment on the regular post of Junior Assistant-cum-Typist once he was not selected against a regular post. The contention of the counsel for the petitioner is that

the petitioner had worked for more than 240 days, preceding the date of his oral termination, this also cannot come to the rescue of the petitioner as no industrial dispute was raised by the petitioner by setting machinery under the Industrial Disputes Act in motion. The judgment of the Apex Court in Civil Appeal No. 4445/2006 is, therefore, also of no help to the petitioner.

10. Considering the aforesaid circumstances, I do not find any merit in the petition. The same is hereby dismissed.

March 13, 2009
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KAILASH GAMBHIR, J.