

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

+ **W.P(C) No.1657/2007**

% **Date of Decision : 11.11.2009**

SANT RAM & ANR. Petitioners
Through: Ms. Priyanka M. Bhardwaj, Advocate
Versus

UNION OF INDIA & ANR. Respondents
Through: Mr. J.P. Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

% **JUDGMENT (Oral)**

ANIL KUMAR, J.

1. The petitioners have filed this writ petition under Article 226 of the Constitution of India to impugn the order dated 22.02.2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1519/2006 and M.A. No.1247/2006, whereby their aforesaid Original Application has been dismissed by the Tribunal by

following the decision of the Supreme Court in ***State of Karnataka & Ors. v. Umadevi & Ors.*** (2006) 4 SCC 1.

2. Petitioner No.1, Sh. Sant Ram, was initially appointed as Safaiwala on casual basis by the Director on 19.09.2003 to work in the National Museum and continued as such on three monthly spells. On 29.04.2004, he was appointed on adhoc basis making it clear to him that his ad hoc appointment shall not confer any right for his regular appointment. The arrangement was a stopgap arrangement and his entry was *de hors* the recruitment rules, as it was not made through open advertisement or competitive examination. Petitioner No.2 was also appointed in the same manner as a Cleaner. Both the posts were Group-D posts in the pay scale of Rs.2500-3200.

3. In the first week of 2005, it appears that there was a move to replace the petitioners. Amrender Kumar i.e. petitioner No.2 herein, approached the Tribunal by filing O.A. No.332/2005 to seek a direction against the respondents to treat his appointment as a regular appointment from the date of ad hoc appointment in terms of DoP&T OM's dated 26.10.1984 and 07.06.1988. It appears, petitioner no.1 herein moved MAN 300/2006 in the said O.A to seek similar relief. That Original Application was disposed off on 28.09.2005 by the Tribunal on the statement of the respondents that they are willing to consider the said petitioners' application for regularization subject to his fulfilling the requisite number of days, as mentioned in the

scheme. Consequently, the Original Application was disposed off by the Tribunal in view of the statement made by the respondents.

4. The respondents then passed the common order dated 18.7.2006 on the representations of the petitioners. It was stated that in the reasoned order that the appointment of petitioner No.1 was de hors the recruitment rules and the same was not made through open advertisement or competitive examination. The respondents sought to rely on the decision of the Supreme Court in **Umadevi** (supra). It was also observed that the petitioners having not completed 10 years of service nor were they recruited through open advertisement or competitive examination, their recruitment was a backdoor entry in terms of the judgment of the Supreme Court in **Umadevi** (supra). Consequently, the representation was rejected.

5. The petitioners then approached the Tribunal to seek quashing of the said order and also to seek regularization of their services in terms of DoP&T OM's dated 26.10.1984 and 07.06.1988. The Tribunal has dismissed the said O.A. by the impugned order.

6. The submission of learned counsel for the petitioners is that the petitioners had been appointed against regular vacancies and in a legal and regular manner. They deny that their appointments were illegal or irregular or that they were appointed through the backdoor.

They also contended that their services were found to be satisfactory and they are entitled for regularization.

7. There is absolutely nothing to show that the appointment of the petitioners was made in a regular manner against sanctioned posts through an open advertisement and competitive examination. The office orders of appointment dated 29.04.2004 of the petitioners have been placed on record. A perusal of these office orders discloses that they were appointed on purely temporary and adhoc basis w.e.f. 15.04.2004 until further orders. It was further stated that the adhoc appointment shall not confer any claim for regular appointment to the concerned posts. Consequently, there appears to be no merit in the petitioners submission that their appointment was against sanctioned posts, after public advertisement and open competition.

8. In **Umadevi** (supra) the Supreme Court has, inter alia, held as follows: -

“43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms

of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who

is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned 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 arm's 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 (sic) 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."

9. In view of the aforesaid legal position, we are of the view that there is absolutely no merit in this petition and the same deserves to be dismissed. The same is accordingly, dismissed.

10. Parties are left to bear their respective costs.

11. Interim order stands vacated.

ANIL KUMAR, J.

NOVEMBER 11, 2009
rsk

VIPIN SANGHI, J.