

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

% Date of decision : 28.01.2009

+ LPA No.755 of 2008 & CM No.17397 of 2008

D.V. RANA & ORS. ...APPELLANTS
Through: Mr. Javed Ahmed, Advocate.

Versus

VICE CHAIRMAN, DELHI AGRICULTURE
MARKETING BOARD & ORS. ...RESPONDENTS
Through: Ms. Avnish Ahlawat &
Ms. Latika Chaudhary, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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

SANJAY KISHAN KAUL, J. (Oral)

1. The appellants were appointed on ad-hoc basis as Gate Men with the respondents. It is the case of the appellants that various posts of Sub-Inspectors (for short 'SI') and others were lying vacant with the respondents and a large number of employees were appointed on ad-hoc basis. The appellants applied for the post of SI with the respondents and were appointed as SI on ad-hoc basis. The appellants filed WP (C) No.518/1983 seeking regularization of their services in the post of SI. Notice was issued in the writ

petition and on the interim application for stay and the appellants were granted protection from termination. On 1.12.1987 the submission of the respondents was noted that the process of regularization in accordance with the Regulation framed is going on and in the meantime there would be no termination of the services of the appellants merely on the ground that they are ad-hoc employees. Thus, the interim order was modified on the basis of the said statement making it clear that there was no bar on the termination of service, if the appellants' case did not fall within the terms of the Regulations for regularization.

2. The writ petition was ultimately dismissed on 29.8.2002 holding that the petitioners appointment was contrary to the recruitment rules and without following the procedure for selection. It was further observed that the interim order passed by the Court in favour of the appellants would not confer any legal rights. Needless to say that no directions were passed for regularization. Simultaneously a direction was, however, passed that the respondents should take steps for filling up vacancies on regular basis and in the selection process, the case of the appellants be considered with the age bar being relaxed, if any. So long as the regular appointments were not made, the services of the appellants were not to be terminated by appointing another set of ad-hoc employees.
3. A review application being RA No.13318/2002 came to be filed seeking review of the order dated 29.8.2002 on the ground that originally 400 employees were appointed on

ad-hoc basis and all of them were regularized except seven persons. Learned counsel for the respondents made a statement that the case of such seven persons would also be considered against the sanctioned posts which may be available either at that time or in future as was done in the case of other employees and thus the review application was disposed of on 19.09.2003.

4. It may be noticed that the respondents had already passed a resolution 33/87 dated 25.4.1987 for consideration of the existing employees for regularization which contained a stipulation that such consideration would be first against the post on which they were initially appointed. On their appointment being regularized against the post on which they were initially appointed their ad-hoc appointment in subsequent higher post was to be in accordance with the provisions of the recruitment rules as and when regular vacancies become available. Regular appointment letters to the post of Sub-Inspector were issued to various persons in pursuance to the policy decision but it is the case of the appellants that they were issued letters only for the post of Gate Men.
5. One of the appellants filed contempt petition No.183/1988 during the pendency of WP (C) No.518/1983. The appellants claimed discrimination in implementation of the interim order in force at that time. The result of the contempt proceedings was that the appointment letters given to the appellants for the post of Gate Men were withdrawn and they continued to hold the post of Sub-

Inspector on ad-hoc basis. Another set of application Nos.3913-14/2004 were filed in review application seeking modification of the order dated 19.9.2003 on the ground that the counsel for the respondents was not authorized to make the statement which resulted in recall of the Order dated 19.09.2003 and RA No.13318/2002 again being fixed for hearing. The review application was disposed of vide order dated 18.1.2008 accepting the contention of the respondents that it would be possible to pass fresh order for regularization of the services of the appellants in the post of a Gate Keeper applying the 'next below' rule but the appointment to the next post of Sub-Inspector on a regular basis should be considered, if any of the juniors of the appellants have since been promoted to the post of Sub-Inspector.

6. The appellants were, once again, aggrieved as according to them they did not want to perform the duties of a Gate Man on a regular basis but prefer to continue on the post of an SI on ad-hoc basis and thus filed WP (C) No.3642/2008. This writ petition was dismissed by the impugned order dated 16.5.2008 on the principle of *res judicata*. The learned single Judge was of the view that accepting the relief claimed by the appellants would amount to reopening the directions passed in WP (C) No.518/1983. Since some observations were made that if the appellants wanted they could file the review application, the appellants filed CM Nos.7750-51/2008 in WP (C) No.518/1983 seeking modification of the order dated 18.1.2008 but those

applications were disposed of on 12.11.2008 with the direction that there was no ambiguity in the orders passed earlier and in case the appellants were aggrieved by the impugned order dated 16.5.2008, they could take recourse to legal remedy. It is thereafter that the present appeal has been filed.

7. We had heard learned counsels for the parties on 23.1.2009 at length. As we were proceeding to pass a reasoned order against the appellants, learned counsel for the appellants requested for some time to obtain instructions whether the appellants wanted to withdraw the appeal and after noticing the same the appeal was renotified for today. Learned counsel for the appellants states that the appellants would like to invite a judgement in appeal.
8. We find from the facts set out aforesaid that the very recruitment of the appellants on ad-hoc basis was not in accordance with the norms. In the earlier writ petition the appellants were held not entitled to regularization. However, in view of the policy framed by the respondents themselves to consider the regularization as per the recruitment regulations, the same was proceeded with but it was made clear that one set of ad-hoc employees should not be replaced by another set of ad-hoc employees.
9. The spate of review applications and applications for directions referred to aforesaid make it clear that the appellants had only a right to be considered for regularization to the post on which they were initially appointed. The appellants were initially appointed as Gate

Men. The fact that their appointment on an ad-hoc basis as SI was protected by interim orders during the pendency of the earlier writ petition cannot give any benefit to the appellants so far as the aspect of initial appointment is concerned as the initial appointment itself was irregular. The policy decision itself made it clear that the right was only of consideration and they were so considered and appointed to the post of Gate Men.

10. The regularization against the post on which they were initially appointed would not *ipso facto* give them a right to be regularized in the higher post of SI. Those vacancies had to be filled as and when they became available.
11. The complete spectrum of the dispute stands adjudicated by the various orders passed in the earlier writ petition and the contempt petition. The peculiar aspect is that the appellants want to continue to work as ad-hoc SI rather than as regular Gate Men. There is no compulsion on the appellants to work and if they are not inclined to work in that capacity they can be released. This would not entail giving them the right to be appointed as an SI.
12. The appellants should have been thankful that having come through an improper channel their cases were still being considered for regularization. The regularization was only at the level at which they were initially recruited with the option of further appointments on vacancies available. The appellants have filed one proceeding after the other without any basis.

13. We must strongly deprecate the endeavour of the appellants to continue to stick to the post of SI on ad-hoc basis even after they have been given the regular appointments of Gate Keeper. This is obviously with an oblique motive.
14. We find the appeal without any merit and dismiss the same with costs of Rs.2,000.00 per appellant totalling to Rs.10,000/-.

SANJAY KISHAN KAUL, J.

JANUARY 28, 2009
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SUDERSHAN KUMAR MISRA, J.