

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

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W.P.(C) 4207/2004

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Date of decision: 20th May, 2010

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RAMESH CHAND

..... Petitioner

Through: Mr. Rishikesh & Mr. Rajeev Dewan,
Advocates.

Versus

THE REGISTRAR, DELHI HIGH COURT & ANR. ...Respondents

Through: Mr. Krishanu Adhikary, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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

RAJIV SAHAI ENDLAW, J.

1. The petitioner instituted this petition seeking direction for his regularization and for mandamus for payment to him of regular scale of pay with all further allowances and benefits, from the date of his initial appointment. It is the case of the petitioner that he was appointed as a daily wager against vacant post of a Sweeper in the Delhi High Court Departmental Canteen, since the year 1987; that his services were discontinued on 29th April, 1990; he was again appointed w.e.f. 4th February, 1995 and given the status of a temporary employee w.e.f. 1st November, 2000. The petitioner contends that he has been throughout representing for regularization but to no avail; that his junior colleagues have been regularized but he was being discriminated against; that the breaks in his

service are artificial; that he has been performing equal duties/work as his other colleagues and is entitled to equal pay.

2. The Secretary of the Delhi High Court Departmental Canteen has filed a counter affidavit contending that the conditions of service of the petitioner are governed by the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980. It is stated that the petitioner was appointed as a temporary Sweeper w.e.f. 1st August, 1987 and his probation was extended from time to time till 31st May, 1991; however, the Chairman of the Canteen Committee in exercise of power under Rule 8(4) of the Rules aforesaid terminated the services of the petitioner with immediate effect during the period of probation itself; however, the petitioner was again put on probation w.e.f. 1st June, 1990 and continued on probation till 31st May, 1991 when his services were again terminated under the Rules aforesaid. It is pleaded that the petitioner was unable to improve his work and conduct during the probation period. It is further admitted that on 31st January, 1995 the petitioner was again appointed on daily wages on sympathetic grounds and was appointed as a temporary Sweeper on 1st November, 2000 and put on probation. The respondent in its counter affidavit has stated that there can be no question of discrimination against the petitioner or the occasion for invoking the principle of 'equal pay for equal work' inasmuch as the petitioner is the only Sweeper in the Departmental Canteen and there is only one post of Sweeper in the Departmental Canteen.

3. Notice was issued to the respondent to show cause as to why rule-nisi be not issued. The matter was adjourned from time to time. On 22nd January, 2010 the counsel for the petitioner informed that the petitioner had been regularized

w.e.f. 1st November, 2000 but according to him he was entitled for regularization from January, 1995. Thus the only question left for determination in this petition is as to whether the petitioner is entitled to be regularized w.e.f. 31st January, 1995 since when he has been working on daily wages or is entitled to be regularized only from the date when he was appointed as a temporary employee.

4. The Rules provide for temporary appointment; they do not provide for any appointment on daily wages. Though the petitioner had worked for the respondent from 1st July, 1987 till 31st May, 1991 also and he was continued on daily wages thereafter also from 31st January, 1995 till 1st November, 2000 but the said action of the respondent is not under challenge. The only question for determination is, if an employee is initially appointed on daily wages, and his services are thereafter regularized, whether his regularization is to date back to the date of initial employment and whether the employee has a right for regularization from the date of initial appointment.

5. The petitioner has in the petition itself relied on:-

(i) Order dated 22nd September, 2000 of a Single Judge of this Court in C.W.P. No.1799/1987 titled ***B.K. Basnotra Vs. The Hon'ble the Chief Justice*** where an employee holding the post of Senior Translator and who had worked as a Court Master for 16 years though had failed to qualify for the said post was allowed the salary/emoluments of a Court Master from the date since when he was made to work as a Court Master.

(ii) ***Harish Kumar Vs. Registrar, Delhi High Court*** 41 (1990) DLT 130, a case under the Delhi High Court Establishment (Appointment and W.P.(C)4207/2004

Conditions of Service) Rules, 1972 where the termination under the CCS (Temporary Service) Rules, 1965 was quashed, finding that the petitioner had been working for 15 years with artificial breaks. While holding so a Single Judge of this Court held that there were no special qualifications prescribed for appointment to the post of a Sweeper and there would be automatic confirmation after a long period.

(iii) ***Dhirendra Chamoli Vs. State of U.P.*** (1986) 1 SCC 637 where ad-hoc employees were allowed equal salary as regular employees on the principle of 'equal pay for equal work'.

(iv) ***Surinder Singh Vs. The Engineer in Chief, C.P.W.D.*** AIR 1986 SC 584 laying down that State and State Undertakings are expected to function like Model Employers.

(v) ***Daily Rated Casual Labour Employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India*** (1988) 1 SCC 122 also laying down that the Government should act as a model employer.

(vi) ***Narender Chadha Vs. Union of India*** AIR 1986 SC 638 where persons promoted in violation of Rules but continuing on the promoted post for over 15 years were not permitted to be reverted and it was further held that Class-IV employees such as the Sweepers have a claim to the post and cannot be thrown out under the CCS (Temporary Service) Rules, 1965.

(vii) ***Rattan Lal Vs. State of Haryana*** AIR 1987 SC 478 deprecating the practice of continuing in employment with breaks and deprivation of service benefits.

(viii) ***Kuldeep Chand Sharma Vs. Delhi Administration*** 1978 (2) SLR 379 where a Division Bench of this Court held that though ad-hoc appointment does not by itself confer any right on the appointee for regular appointment, however, on regular appointment, the date of regular appointment would relate back to the date of ad-hoc appointment. However, this was a case of promotion and not of regularization of service.

(ix) ***Suraj Bhan Vs. Union of India*** 2006 (92) DRJ 180 where in a case of *inter se* seniority, a Division Bench of this Court held that the same has to be computed from the date of initial appointment.

(x) ***B.D. Verma Vs. Union of India*** (1997) 10 SCC 433, also a case of *inter se* seniority where on the ground of discrimination the petitioners were also given the benefit of computation of period of ad-hoc appointment as was given under the Rules to another set of employees.

(xi) ***R.S. Ajara Vs. State of Gujarat*** (1997) 3 SCC 641 also a case of *inter se* seniority.

(xii) ***Dr. (Captain) Akhouri Ramesh Chandra Sinha Vs. State of Bihar*** (1996) 2 SCC 20 laying down that on satisfactory completion of probation, confirmation dates back to the initial appointment.

(xiii) ***G.P. Doval Vs. Chief Secretary, Government of U.P.*** AIR 1984 SC 1527 where officiating service was held to be entitled to be included in drawing up *inter se* seniority.

(xiv) ***The Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra*** AIR 1990 SC 1607 laying that once an incumbent is appointed to a post according to a rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

(xv) ***Prem Chand Vs. MCD*** 2000 I AD (DELHI) 859 a case of preparation of seniority list for the purpose of absorption.

(xvi) ***Sushil Kumar Yadunath Jha Vs. Union of India*** AIR 1986 SC 1636 where a teacher was first appointed temporarily, his services were terminated and thereafter given fresh appointment, was held entitled to the benefit of continuous service notwithstanding a term to the contrary in the appointment letter.

(xvii) ***Lieutenant Governor of Delhi Vs Constable Dharmpal*** [1990] 3 SCR 93 which was a case of enforcement of an order and not applicable to the present controversy.

(xviii) ***Inder Pal Yadav Vs. Union of India*** (1985) 2 SCC 648 where, under a scheme for absorption of casual workers, the Supreme Court directed the absorption to be in order of length of continuous service and on the principle of 'last come first go'.

(xix) *Anil Kumar Gupta Vs. State of Bihar* 1996 (7) SCC 83 where termination of employees was held illegal and the period between termination and reinstatement was directed to be counted as period in service.

6. From the aforesaid, it will be clear that none of the judgments aforesaid deal with the matter in controversy. Moreover, all the aforesaid judgments are prior to the judgment of the Constitution Bench of the Supreme Court in *Secretary, State of Karnataka Vs. Umadevi* AIR 2006 SC 1806 laying down that appointment *de hors* due process of selection confers no right in the appointee and the right of the Court would not extend to directing regularization to be treated as permanence in service; it was further laid down that the fact that an employee has been continued for long would not entitle the Court to direct his regularization.

7. The counsel for the respondent besides referring to *Umadevi* (supra) has also handed over the judgment in *Steel Authority of India Ltd. Vs. State of West Bengal* AIR 2009 SC 120. However, the said judgment is also not found applicable to the facts of the present case.

8. I find that the Supreme Court in *Registrar General of India Vs. V. Thippa Setty* 1998 (8) SCC 690 has held that if the ad-hoc service is regularized from the back date, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularization must take effect prospectively and not retrospectively. It was further held that ad-hoc appointees, casual labour and daily rated persons are not subject to strict discipline of service and their attendance is very often not regular and at times they do not even meet

the qualification for appointment since they are taken on ad-hoc basis; these deficiencies are overlooked by way of granting of relaxation and, therefore care must be taken to see that they do not upset the seniority of regular employees. It was reiterated that regularization must be prospective. The said judgment was followed in ***Union of India Vs. Sheela Rani*** 2006 (13) SCALE 394 where reference in this regard was also made to ***State of Haryana Vs. Jasmer Singh*** (1996) 11 SCC 77. This Court followed the same view in ***Sudheer Srivastava Vs. Director AIIMS*** 105 (2003) DLT 74 and in ***DDA Vahan Chalak Karamchari Union Vs. DDA*** MANU/DE/0095/2005 where the period during which the petitioners had discharged duties on work charged basis was held to be not entitled to be counted for seniority in regular appointment. The principle of estoppel was also invoked in ***DDA Vahan Chalak Karamchari Union*** (supra).

9. In ***Excise Commissioner, Karnataka Vs. V. Sreekanta*** AIR 1993 SC 1564, though a case of *inter se* seniority, it was also held that seniority cannot be claimed from the date of initial appointment on ad-hoc basis and can be claimed only from the date of regularization.

10. In ***K. Madalaimuthu Vs. State of Tamil Nadu*** AIR 2006 SC 2662, also a case of *inter se* seniority, it was held that a person, who is appointed temporarily to discharge the functions without recourse to the Recruitment Rules cannot be said to be in service till such time his appointment is regularized.

11. The counsel for the petitioner has contended that unless the service of the petitioner is counted w.e.f. 31st January, 1995 the petitioner may not be entitled to any pensionary benefits. Though no such claim has been made in affidavit but

in view of the legal position aforesaid, no indulgence can be shown to the petitioner. The relief of regularization in employment cannot be granted in view of the judgment in *Umadevi*. The counsel for the petitioner contends that since the petitioner has already been regularized, *Umadevi* will not apply and the question is only of the date from which regularization is to take place. However, the judgment in *Umadevi* cannot be permitted to be diluted in this fashion as has been held in *Official Liquidator Vs. Dayanand* (2008) 10 SCC 1.

12. The petitioner is thus not entitled to the relief for which this petition was confined, of his regularization from 31st January, 1995. The petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th May, 2010
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(corrected and released on 31st May, 2010)