

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

+ **WP(C) No.3248/2010**

% **Date of Decision: 12.05.2010**

D.D.A. Mazdoor Union (Regd.) & others Petitioners
Through Mr.Ch.Rabindra Singh & Mr.Harinder
Chaudhary, Advocates.

Versus

The Lieutenant Governor NCT of Delhi & others Respondents
Through Ms.Neha Mittal, Advocate for respondent
Nos.2 & 3.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether 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 |

ANIL KUMAR, J.

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The petitioners, D.D.A. Mazdoor Union (Regd.) & others, have impugned the order dated 24th February, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A.No.1143 of 2009, titled as 'D.D.A. Mazdoor Union v. Lieutenant Governor, Delhi & others', dismissing their Original Application seeking regularization of the contractual services of some of the employees working in various sports complexes belonging to the DDA at Delhi.

The petitioners, D.D.A. Mazdoor Union, had contended before the Court taking grievances of its 13 Members who were allegedly engaged on various dates from 27th January, 1991 to 12th August, 1996 as Groundman/Billiard Marker/ Sweeper in various sports complexes belonging to the Delhi Development Authority.

The petitioners contended that similar workers were regularized in other wings of DDA, but those workers who were appointed on contract basis in the sports wings were not regularized though they had been working for more than five years. In the writ petition filed by the petitioners, they had sought regularization in the regular service on their respective posts and to make a reference under suitable provisions of Industrial Disputes Act, 1947 to the Industrial Tribunal/Labour Court. The writ petition filed by the petitioner was transferred to the Central Administrative Tribunal.

Before the Tribunal, the case was adjourned on various dates. The matter was not argued by the counsel for the petitioners. Therefore on the basis of rules framed under Administrative Tribunals Act, the petition and other pleadings were perused by the Tribunal and the issues raised in the petition before the Tribunal were adjudicated. Learned counsel for the petitioners before the Tribunal instead of arguing the case sought time to file the rejoinder to the counter affidavit which was filed in the year 2000 many years back, which was declined.

The counsel for the petitioners did not argue the matter despite opportunity given to him.

The Tribunal after considering the pleas and contentions as raised in the petition and the counter affidavit, noticed that the persons on whose behalf the petition was filed were employed for a fixed period varying from 6 months to 12 months and they were not appointed on regular post, neither the vacancies were advertised, nor there had been any proper selection for appointment. The Tribunal repelled the contentions raised on behalf of the petitioners that they had been marking their presence in the attendance register and therefore they had been working continuously. Along with counter affidavit, the details of the staffs engaged on contract basis in sports wing of the DDA was also annexed which reflects that they had break in their services. Noticing of these facts and relying on Secy., State of Karnataka v. Umadevi and others (2006) 4 SCC 1; especially para 45 at page 37, it was held that the petitioners are not entitled for regularization. Para 45 of the Uma Devi (supra), is as under:

“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 open eyes. 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  38 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 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.”

It has been held by the Tribunal that the petitioners’ members are not entitled for regularization. The Tribunal also referred to the facts that while appointing the petitioners’ Members no assurance was given to them that they would be regularized and they were appointed only on contract basis. Regarding regularization of some of the daily wagers in the DDA, it was held that the regularization of some of the daily wagers was pursuant to the judicial decision in their cases, and in any case after the decision of Umadevi’s case (Supra), holding that when a person

enters a temporary employment or gets engaged as a contractual or casual worker and the engagement is not based on a proper selection and if such employments were of the consequence of appointment being temporary, casual or contractual in nature, such a person cannot claim regularization, the petitioners cannot be regularized. In the circumstances, the pleas of the petitioner for regularization of its members were repelled and the petition was dismissed.

Learned counsel for the petitioner has reiterated the pleas and contentions raised before the Tribunal. This has not been disputed and cannot be disputed by the learned counsel for the petitioner that the members of DDA Mazdoor Union were appointed on contract basis for a short term without any proper selection and without post being advertised. The Members of the petitioner who joined the services in different sports complex on contract basis were aware that they are not regular employees. Consequently, on account of having worked for a fixed periods from time to time in various sports complex, the petitioners do not get the right of a regular employee.

In the circumstances, the findings of the Tribunal that the contract workers engaged by the respondents in sports complex cannot be regularized in regular service of DDA cannot be faulted. There is no illegality, irregularity, or such perversity in the order of the Tribunal,

which will necessitate any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

The writ petition is without any merit, and it is, therefore, dismissed.

ANIL KUMAR, J.

MAY 12, 2010
'VK'

MOOL CHAND GARG, J.