

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

+ **LPA 2030/2006**

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Reserved on: July 16, 2010

Decided on: August 25, 2010

SHRI SHYAM BABU

..... Petitioner

Through: Mr. V.P.Tripathi, Advocate

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Avnish Ahlawat, Advocate

Coram:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MS. JUSTICE MUKTA GUPTA

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

MUKTA GUPTA, J.

CM No.11830/2010 (Exemption)

Allowed, subject to all just exceptions.

CM No.11829/2010 (Delay)

For the reasons stated in the Application the delay of 78 days in filing the Review Petition is condoned. Application is allowed.

Review Petition No. 275/2010

1. The Appeal filed by the Petitioner was disposed of vide order dated 14th January, 2010 passed by this Court with the directions to the Respondent to make payment of `1 lakh to the Petitioner as compensation in lieu of reinstatement within six weeks failing which the amount would carry interest at the rate of 9% per annum. The Petitioner was working as Beldar (Daily Wager) with Respondent sometime since October, 1982 and on 12th March, 1984 he made an Application to the Respondents seeking regularization and a regular pay scale. While the matter was still pending before the Conciliation Officer, his services were terminated with effect from 1st August, 1984. The Petitioner made an Application under Section 33A of the Industrial Disputes Act, 1947 alleging that his services were illegally terminated and a reference was made by the appropriate Government to the Industrial Tribunal with respect to his claim of regularization and termination from service. Though the Respondent claimed abandonment of service, however no reference was made on this issue. The two issues before the Industrial Tribunal were of regularization and illegal termination of service of the Petitioner. The Industrial Tribunal awarded in favour of the Petitioner and directed reinstatement with continuity of service and back wages. On a challenge by the Respondent, the learned Single Judge, set aside the two awards following the decision in ***Secretary, State of Karnataka v. Uma Devi***

and others, 2006 (4) SCC 1 and held that the regularization cannot be directed if the initial entry itself is not against any sanctioned vacancy.

2. Impugning the order dated 5th September, 2006 passed by the learned Single Judge the Petitioner filed the Appeal wherein this Court held that the Industrial Tribunal was correct in holding that the services of the Petitioner has been illegally and unjustifiably terminated in violation of the provisions of Section 25F of the Industrial Disputes Act. With regard to the other relief it was held that the Petitioner was a daily wager who had worked for less than two years and even if it was concluded that the services were illegally terminated on 1st August, 1984, the Petitioner has no right to retain the post being a daily wager. This Appeal was heard at length on 13th and 14th January, 2010. On 14th January, 2010 learned counsel for the Petitioner made a statement not pressing his claim for regularization in view of the decision of the Hon'ble Supreme Court in ***Secretary, State of Karnataka vs. Uma Devi & others (supra)***, in our view rightly so as the law laid down by the Hon'ble Supreme Court clearly enunciates that a daily wager has no right to be regularized if the recruitment is bypassing the constitutional scheme of public employment. This Court thus granted compensation of ` . 1 lakh in lieu of reinstatement to the Petitioner.

3. By way of this Review Petition the Petitioner seeks to contend that the Petitioner should have been regularized and the action of the

Respondent is violative of Article 14 and 16. It is contended that the Petitioner never intended to give up his claim of regularization and the counsel authorized by the Petitioner has wrongly submitted this fact before the Court. It is further stated that no copy of the policy change had been placed by the Respondent and in any case the compensation of ` 1 lakh is on the lower side and the Petitioner is entitled to reinstatement in services with continuity and full back wages.

4. The scope of a Review Petition is very limited. The Petitioner is required to show either an error apparent on the face of the record or discovery of new and important fact or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced when the judgment was passed. The ground now being raised that four employees junior to the Petitioner have been regularized, and thus, is violation of Articles 14 and 16 of the Constitution of India, has not been urged in the Appeal. In a Review Petition the Petitioner is not entitled to raise fresh pleas unless it is shown that the Petitioner was not in possession of the relevant material, despite due diligence. The contention that the Petitioner had given no instructions to the earlier counsel to give up the claim of regularization is also untenable. The Appeal was heard on 13th January, 2010 and then on 14th January, 2010. It was only after going through the legal position in view of the decision of the Hon'ble Supreme Court in ***Secretary, State of Karnataka vs. Uma Devi and others (supra)*** learned counsel on instructions from

the Petitioner made the statement on the next day. It may be noted that the Petitioner is in the habit of making such allegations. Earlier also vide order dated 15th April, 2009 this Court had felt that this was a case which could be settled between the parties and had requested the parties to consider this aspect. When the matter came up for hearing on 26th May, 2009 learned counsel for the Petitioner on instructions from the Petitioner stated that without prejudice to the rights and contentions in the Appeal in order to arrive at a settlement the Petitioner is willing to give up the claim of back wages, continuity in service and seniority provided he is treated in a similar fashion as other persons of his vintage who remained in service. Learned counsel for the Respondents took time to look into this aspect of the matter and in pursuance thereto filed an Affidavit of Shri H.S. Bhardwaj, Executive Engineer, CD-V, Irrigation and Flood Control Department, Government of NCT of Delhi stating that the matter was considered and it was felt that according temporary status to one workman, may result into opening of flood gate for other similarly placed casual/daily wager who had at one time or the other worked/engaged by the department. It was also stated that accepting this proposal would amount to creation of posts which could not be done without undergoing all other necessary formalities. The Affidavit also states that the appointment of daily wagers has been stopped long back since 1988 and that time also daily wagers were engaged as per exigency of work. The Respondent

offered to get the Petitioner engaged as unskilled worker through outsourcing agency, which offer was not acceptable to the Petitioner. In the present review petition the Petitioner has filed copy of the complaint against the learned counsel who had made the statement on 26th May, 2009. In our view, the withdrawal of the claim for regularization was reasonable and fair on the part of the learned counsel for the Petitioner in view of the decision of the Hon'ble Supreme Court.

5. The contention that the monetary compensation being on the lower side is also untenable as this Court granted the compensation of 1 lakhs in lieu of reinstatement following the precedent laid by the Hon'ble Supreme Court in *Jasbir Singh vs. Haryana State Agricultural Marketing Board and another, JT 2009 (9) SC 396*.

6. We find no ground to interfere with the order dated 14th January, 2010. The Review Petition is dismissed.

(MUKTA GUPTA)
JUDGE

(VIKRAMAJIT SEN)
JUDGE

AUGUST 25, 2010
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