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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 28th May, 2012

+ LPA 928/2011 & CM APPL. 20509/2011

DELHI DEVELOPMENT AUTHORITY APPELLANT

Through: Mr. Rajesh Mahajan, Advocate.

Versus

JAI PRAKASH

..... RESPONDENT

Through: Mr. Anuj Aggarwal, Advocate.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K.SIKRI, ACTING CHIEF JUSTICE (Oral)

1. The respondent herein was engaged as *Beldar* by the DDA on 24.5.1983 on muster roll. He worked for almost 8 years continuously when his services were terminated in March, 1991. Challenging his termination, he raised an industrial dispute which was referred to the Labour Court. The Labour Court passed Award dated 23.5.2001 vide which it was held that his termination was bad in law and the Award was passed directing reinstatement of the respondent with continuity of service and 50% back wages. The DDA filed Writ Petition (C) 5905/2003 challenging that Award which is still pending before this Court. In that writ petition, initially notice was issued limited to back wages as ordered by the Labour Court and no notice was issued on reinstatement. In these

circumstances, the DDA took back respondent workman in service and the respondent workman is thus continuing in service with the appellant. Since he was taken back in the same capacity in which he was working before his termination, i.e. as a daily wager, the respondent workman, now through the Union raised another dispute, this time about his regularization, which also was referred to the Industrial Tribunal with the following terms of reference:-

“Whether the demand of the Municipal Employees Union for regularization of services of Shri Jai Prakash w.e.f. 24.5.83 is legal and justified if yes, to what relief the workman is entitled to and from which date?”

2. The DDA contested this reference by contending that in view of the Constitutional Bench judgment of Supreme Court in *Secretary, State of Karnataka Vs. Uma Devi* (2006) 4 SCC 1, the respondent was not entitled to regularization. The Labour Court did not accept this submission on the ground that it was a case of discrimination where various other persons junior to the respondent workman namely Smt. Javitri w/o Shri Madan Lal, Shri Ranbir and Shri Kishan etc. were regularized whereas the respondent workman was ignored. This contention of the respondent workman was accepted by the Industrial Tribunal and vide Award dated 29.10.2010 directed the regularization of the respondent workman in service. While arriving at this conclusion the Industrial Tribunal referred to the judgment of the Supreme Court in *U.P. State Electricity Board v. Pooran Chandra Pandey* (2007) 11 SCC 92.

3. The DDA challenged this Award by filing writ petition which has been dismissed by the learned Single Judge vide impugned order dated

23.9.2011.

4. Present appeal is filed challenging that order. Before us, learned counsel for the appellant argues that the judgment in **Pooran Chandra Pandey** (*supra*) relied upon by the Industrial Tribunal has been overruled by the Supreme Court in **Official Liquidator Vs. Dayanand and Others** (2009) 1 SCC (L&S) 943 and therefore, the Award of the Tribunal is liable to be set aside on this ground alone.

5. However, we find that this argument was not raised before the learned Single Judge at all. The only point that was urged by the appellant in the writ petition was that since the subject matter of the termination of the respondent was pending adjudication in WP(C) 5905/2003, the Industrial Tribunal could not have directed the regularization. This is taken care of by the learned Single Judge vide impugned order in the following words:-

“2. Since the workman has already been reinstated, pending the decision in W.P.(C) No. 5905/2003, there should be no difficulty in the DDA complying with the impugned Award dated 29th October, 2010 of the Labour Court with the caveat that the regularization of the workman would be subject to the outcome of W.P.(C) 5905/2003.”

6. That apart, we note that the case of the respondent was that he had served for more than 10 years and even in terms of **Uma Devi** (*supra*) he was entitled to regularization. Learned counsel for the respondent has drawn our attention to the recent judgment of the Apex Court in **State of Karnataka and Ors. Vs. M.L. Kesari & Ors.** MANU/SC/1129/2010 (decided on 3.8.2010). In that case, the Supreme Court referred to the extract from **Uma Devi** (*supra*) wherein the Court had directed the Union of India and State Governments and their instrumentalities to take

steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of Courts or Tribunals, as a onetime measure. The scope of the said para is explained by the Supreme Court in ***M.L. Kesari*** (*supra*) in following manner:-

“5. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in *Umadevi*, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

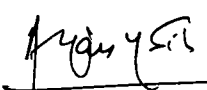
Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-

time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

6. The term 'one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services."

7. In view of the aforesaid clarification/interpretation given by the Supreme Court to its earlier judgment in *Uma Devi* (supra) and which interpretation binds us, we find that the direction to regularize the respondent herein was rightly given by the Industrial Tribunal.

8. We thus do not find any merit in this appeal which is accordingly dismissed.


ACTING CHIEF JUSTICE

(RAJIV SAHAI ENDLAW)
JUDGE

MAY 28, 2012
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- C.M.No. - 3/50/11- direction to release the money deposited in the court.
- Amount of Rs. 9,95,071/- deposited by applicant.
- Appeal dismissed on 28-5-12.