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

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W.P.(C) No. 20033/2004

**23<sup>rd</sup> April, 2013**

NAIK SH. S.L.MAURIYA

.....Petitioner

Through: Ms. Deepali Gupta, Advocate.

**VERSUS**

CHAIRMAN, GANDHI SAMITI & DARSHAN SAMITI & ANR.

..... Respondents

Through: Dr. A.Francis Julian, Sr. adv. with Mr.  
Danish Zubair Kha, Adv. for R-1.

Mr. Dinesh Sharma, Adv. for Mr. Sachin  
Datta, Advocate for R-2/UOI.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This writ petition is filed by the petitioner, an ex-serviceman, who was appointed as a driver by the respondent no.1. The case as set up in the petition is that the petitioner was appointed from time to time on adhoc basis initially from 5.8.1997, and thereafter, he was also appointed on contract basis firstly in the year 2000 and thereafter from time to time he was given further adhoc appointments. The petitioner contends that petitioner has been wrongly terminated from service and he is entitled to regularization of his service. Counsel for the petitioner also

contends that the petitioner was assured that he will be given regularization by the respondent no.1, and therefore, termination of the petitioner is illegal.

2. A reading of the writ petition shows the following admitted facts:-

(i) Petitioner was appointed on adhoc or contractual basis for different periods.

All such appointment letters have been filed by the petitioner.

(ii) There is no averment in the writ petition that the petitioner was appointed against any vacancy in a sanctioned post by following the regular recruitment process.

3. The issues which have been urged in the present case are no longer *res integra* in view of the Constitution Bench judgment of the Supreme Court in the case of ***Secretary State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1.***

Following is the ratio of the Supreme Court in the case of ***Umadevi (supra)***.

(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible

persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality(except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in

favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of *Uma Devi* is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution.

4. A reading of the aforesaid ratio shows that unless a person has been appointed against a vacancy in a sanctioned post, and that too through the regular recruitment process of advertisement, such person cannot be regularized to the post. The Supreme Court has said that casual workers or adhoc appointees cannot be regularized in service. The Supreme Court has clarified that there is no legitimate expectations of such persons to claim that they would be regularized in service on account of any assurance by the employer because any employment *de hors* the scheme is illegal and such service cannot be regularized. The only exception made by the Supreme Court was with respect to those qualified persons who had worked for 10 years against vacancies in sanctioned post, and for which persons, the concerned organizations had to make policies for their absorption. So far as other casual employees or adhoc appointees or contractual employees or work charged employees or project employees are concerned, the Supreme Court has held that there is no equity in favour of such persons to claim regularization because equity in favour of millions of persons awaiting public employment overrides the equities claimed by the limited number of persons who were illegally appointed and who seek regularisation.

5. Learned counsel for the petitioner sought to place reliance upon the judgment of the Supreme Court in the case of ***Kusum Gupta Vs. Haryana State Small Industries & Export Corporation, Chandigarh, AIR 1986 SC 1905*** to argue that if any employee is terminated by not giving the necessary one month's notice or payment of salary in lieu of notice, the termination is illegal and such employee is entitled to be reinstated. I may note that the decision relied upon by the petitioner pertains to reinstatement under the Industrial Disputes Act, 1947 and so far as the facts of the present case are concerned, the present case is a writ petition alleging the respondent to be a State and therefore, the ratio of ***Umadevi (supra)*** squarely comes into play. Also the judgment in ***Kusum Gupta's (supra)*** case will no longer be good law in view of the judgment in the case of ***Uma Devi (supra)***.

6. Also, I may note that at best if a person is terminated without giving one month's notice, then such person will be entitled to one month's pay and cannot claim for being regularized in services. This is so stated by the Supreme Court in the case of ***S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12*** and paras 12 and 13 of this judgment of the Supreme Court reads as under:-

“12. The position as it obtains in the ordinary law of master and servant is quite clear. The master who wrongfully dismisses his servant is bound to pay him such damages as will compensate him for the wrong that he has sustained.

“They are to be assessed by reference to the amount earned in the service wrongfully terminated and the time likely to elapse before the

servant obtains another post for which he fitted. If the contract expressly provides that it is terminable upon, e.g., a month's notice, the damages will ordinarily be a month's wages.....No compensation can be claimed in respect of the injury done to the servant's feelings by the circumstances of his dismissal, nor in respect of extra difficulty of finding work resulting from those circumstances. A servant who has been wrongfully dismissed must use diligence to seek another employment, and the fact that he has been offered a suitable post may be taken into account in assessing the damages". (Chitty on Contracts, 21<sup>st</sup> Edn., Vol (2), p. 559 para 1040).

13. If the contract of employment is for a specific term, the servant would in that event be entitled to damages the amount of which would be measured *prima facie* and subject to the rule of mitigation in the salary of which the master had deprived him. (Vide *Collier v. Sunday Referee Publishing Co. Ltd.*, 1940-4 All. E.R.234 at p. 237(A). The servant would then be entitled to the whole of the salary, benefits, etc., which he would have earned had he continued in the employ of the master for the full term of the contract, subject of course to mitigation of damages by way of seeking alternative employment."

7. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of accordingly.

**APRIL 23, 2013**  
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**VALMIKI J. MEHTA, J.**