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

+ W.P.(C) 2104/2013

GANGA SHAHI

.....Petitioner

Represented by: Mr.Medhanshu Tripathi, Advocate

versus

DELHI JAL BOARD & ANR.

..... Respondents

Represented by: Mr.Nishakant Pandey, Advocate

W.P.(C)1826/2013

ABDUL WAHID

.....Petitioner

Represented by: Mr.Medhanshu Tripathi, Advocate

versus

DELHI JAL BOARD & ANR.

..... Respondents

Represented by: Mr.Nishakant Pandey, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

ORDER

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23.07.2013

1. Abdul Wahid and Ganga Shahi have been litigating on the subject of regularization of their services as Pump Operator/Pump Driver since long. Undisputedly they were engaged as daily wagers. On a reference made to the industrial adjudicator under the Industrial Disputes Act, 1947 they succeeded in having an award in their favour which award was upheld by a learned Single Judge of this Court but was set aside by a Division Bench when LPA 683/2003 filed by the predecessor-in-interest

of Delhi Jal Board was allowed. On February 07, 2006. But five years

later the two raised the issue once again by approaching the Central Administrative Tribunal seeking relief against Delhi Jal Board because with the constitution of the Board the work pertaining to supply of water in Delhi which was with the Municipal Corporation of Delhi was taken over by the Board.

2. Dismissing the Original Applications filed by them vide impugned decision dated November 03, 2012 the Tribunal has held that the claim was barred by res judicata. Needless to state the decision of the Division Bench in LPA No.683/2003 dated February 07, 2006 has been heavily relied upon by the Tribunal.

3. As per Ganga Shahi and Abdul Wahid a fresh cause of action accrued to them when they learnt that large number of daily wagers had been regularized as Pump Operators overlooking their claim.

4. Since we are dealing with daily wagers, we have considered the matter de-hors the decision of the Division Bench of this Court in LPA No.680/2003 for the reason Ganga Shahi and Abdul Wahid claimed that at that stage they had no knowledge of other daily wagers being regularized.

5. Undisputedly the post of a Pump Operator/Pump Driver is a Group 'C' post and as per the notified Recruitment Rules, essential qualification is an Electric Diploma from an Industrial Training Institute. Admittedly till date Abdul Wahid does not possess any such diploma. Admittedly, Ganga Shahi had obtained one in the year 2006.

6. Thus, reliance by the petitioners on various office orders pertaining to regularization of Group 'D' employees is of no use for them and it is of no use for us to note the said office orders because learned counsel Ganga Shahi and Abdul Wahid concedes that each office order on which they rely pertains to Group 'D' daily wagers and that Pump

Operators are in Group 'C'.

7. In the decision reported as (2006) 4 SCC 1 Secretary State of Karnataka Vs. Uma Devi the Constitution Bench of the Supreme Court clearly held that ad-hoc, temporary or daily wage appointments which were made contrary to the Rules would be illegal appointments conferring no right to be regularized.

8. As regards the persons who were regularized in service and on account of which fact Ganga Shahi and Abdul Wahid litigate once again, the respondents have explained in the reply filed by them before the Tribunal to the Original Applications filed by Ganga Shahi and Abdul Wahid that 34 persons whose names have been mentioned in the list by the petitioners are not employed with the Delhi Jal Board and we find that particulars of said 34 names with reference to the serial number of the list relied upon by the petitioners have been disclosed in paragraph 6 of the reply filed to OA No.4492/2011 filed by Ganga Shahi. As regards others, save and except two persons who were regularized because of court orders, it has been explained that other daily wage Pump Operators were regularized because they possessed the necessary technical qualifications and further as and when regular vacancies accrued.

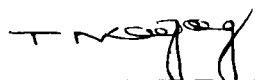
9. We note that on account of having acquired the technical qualification in the year 2006 Ganga Shahi would now become eligible to be regularized, the respondents inform us that his name has already been entered in a list of persons who would have to be regularized as and when vacancies accrue and assure the Court that when Ganga Shahi's name matures as per the list he would be made permanent.

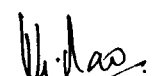
10. As regards Abdul Wahid, since he does not possess the requisite qualification and noting that as per the existing Recruitment Rule a power to relax the Recruitment Rule does not exist, no relief can

be granted to him.

11. Dismissing the two writ petitions we take on record the assurance with respect to Ganga Shahi as per para 9 above and as regards Abdul Wahid we would recommend to the Competent Authority to, as a one time exception, consider waiving the technical qualification for the reason, experience gained while performing a job may sometimes equal more than a technical qualification. Abdul Wahid has been working as a Pump Operator for over two decades and he has successfully managed the job. Surely, he has learnt the nuances of the trade while working.

12. No costs.


PRADEEP NANDRAJOG, J.


V.KAMESWAR RAO, J.

JULY 23, 2013

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