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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 3789/2010

9th April, 2013

DAULAT RAM & ORS.

..... Petitioners.

Through: Ms. Rachna Joshi Issar and Ms. Ambreen
Rasool, Advocates.

VERSUS

NATIONAL OPEN SCHOOL & ANR.

..... Respondents

Through: Mr. S.Rajappa, Adv. and Dr. Puran Chand,
Adv. for R-1.

Mr. Apoorv Kurup, Adv. for R-2.

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 six petitioners. In the writ petition, the following reliefs are claimed:-

“(i) issue an appropriate writ, directing the respondent to consider the case of the petitioners for regular employment, and quash the order dated 1-5-2009 (Annexure P 5 Supra)

AND

(ii) directs the respondent to give employment to the petitioners at its regional centres in terms of order dated 9-9-2002 (Annexure P1 Supra)

AND

(iii) pass such order/s as may be deemed fit and proper.”

2. A reference to the reliefs which are claimed in the writ petition shows that relief no.(i) is for the claim of regular employment by quashing the order dated 1.5.2009 and relief no.(ii) is to direct the respondent no.1 to give employment to the petitioners in terms of the order dated 9.9.2002 which was passed in CW No. 6303/1999.

3. At the outset I must state that if the prayer for regularization is taken in itself without anything more, the relief claimed would be barred by the ratio of the Constitution Bench judgment of the Supreme Court in *Secretary, State of Karnataka vs. Umadevi & Ors. 2006(4) SCC 1* which says that casual employees cannot be regularized. Similar is the view of Supreme Court in *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408*. The relief of regularization of petitioner no.1 is however claimed on the basis of an earlier judgment of this Court between the parties and I am hence considering the prayer for regularization.

4. Though the pleadings in the writ petition and the additional affidavit leave a lot to be desired so far as the issue as to how the petitioner no.1 and only for whom permanent employment is claimed (besides an additional claim of

petitioner no.1 alternatively for casual employment), however, I would accept the submission of the counsel for the petitioners that the petitioners being not rich persons, they have done their best in getting whatever information they can and this Court must consider the pleadings liberally and also by considering everything which has come on record in the form of not only the writ petition and its annexures but also a supplementary affidavit on behalf of the petitioners. I may note that the respondent no.2 whose employment was questioned for a permanent post, has filed a counter-affidavit and which will also have to be considered.

5. Taking the aspect of claim of permanent employment, counsel for the petitioners relies upon the advertisement issued by the respondent no.1 dated 23.1.2009 and copy of which has been filed alongwith the counter-affidavit of respondent no.2. It is argued that petitioner no.1 had submitted his application dated 30.1.2009 for appointment as a peon, but the petitioner was not even called for the interview or the written test inasmuch as no intimation for appearing was given to the petitioner no.1. It is argued that once no intimation was given to the petitioner no.1, petitioner no.1 could not be expected to have joined for the written test or the interview. It is alleged that therefore there is violation of the judgment dated 9.9.2002 passed in the earlier CW No. 6303/1999 between the parties.

6. In my opinion, the issue of compliance of a final judgment though cannot be a subject matter of independent proceedings, inasmuch as if there is any

violation of final judgment, contempt proceedings would lie , however, I have yet to consider the issue on merits. The issue is that whether the petitioner was entitled to be called for the interview or written test pursuant to his application dated 30.1.2009. To the extent that this application dated 30.1.2009 of the petitioner no.1 was received by the respondent no.1, the same cannot be an issue because respondent no.2 has filed a response to an RTI query by the respondent no.1-employer(which is dated 6.7.2010) and which shows that the petitioner no.1 had in fact applied. In the facts of this case however there cannot be any violation of the judgment dated 9.9.2002 in CW No. 6303/1999 inasmuch as petitioner no.1 admittedly applied in the unreserved category for the post of the peon whereas the response to the RTI query by the respondent no.1 dated 6.7.2010 shows that post of peon was reserved for the OBC category. In fact, even the advertisement dated 23.1.2009 mentions of two posts, one unreserved and one OBC. It cannot be doubted that the respondent no.2 who was appointed to the post of peon, the post to which the petitioner no.1 applied, is an OBC candidate. Once the post of peon is reserved for OBC category and the respondent no.2 fell in the OBC category and hence was appointed, the petitioner no.1 therefore cannot complain of his non-consideration because the petitioner no.1 is a general category candidate and the post of peon to which the respondent no.2 was selected pursuant to the advertisement was of a post of peon reserved for OBC candidate.

7. Now, the issue is of the claim of all the petitioners for casual employment. This claim is with reference to the second relief which is claimed in the writ petition and as per which, the petitioners claim employment at regional centres in terms of the judgment dated 9.9.2002. Once again, the issue urged is actually of compliance of a final judgment of this Court, and hence cannot be a subject matter of independent petition and contempt petition would be an appropriate remedy. Counsel for the petitioners has drawn my attention to the order dated 11.5.2009 passed in Cont. Case(C) No. 916-21/2006 which was dismissed as withdrawn because respondent no.1 informed that various persons are being sent letters as contained in the seniority list to find out the willingness to work in the regional centres. Assuming that has not been done yet the issue still will remain of compliance of the judgment dated 9.9.2002 and in the realm of contempt proceedings and not again seeking directions in a new petition and which directions are already contained in the judgment dated 9.9.2002. No purpose will be served by repeating the same directions in a new judgment.

8. The issue, therefore, really boils down to compliance of the judgment dated 9.9.2002 by calling the petitioners for casual employment at the regional centres. If there is any entitlement in the petition for casual employment, inasmuch as, the respondent no.1 has violated the judgment dated 9.9.2002, the petitioners will be at liberty to file appropriate independent contempt proceedings for

enforcing the judgment dated 9.9.2002, however, a fresh writ petition is not a remedy because in a fresh writ petition directions cannot be sought for implementing of an earlier final judgment of this Court, and which has necessarily to be done only by means of contempt proceedings, assuming there is any cause of action in the same.

9. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.

APRIL 09, 2013
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VALMIKI J. MEHTA, J.