

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

Judgment Reserved on July 26, 2013
Judgment Delivered on August 02, 2013

+ W.P.(C) 6967/2012

BIRMANAND Petitioner
Represented by:Mr.V.P.S.Tyagi, Advocate

versus

UNION OF INDIA AND ORS Respondents
Represented by:Mr.Ankur Chibber, Advocate

+ W.P.(C) 7453/2012

JAI PRAKASH Petitioner
Represented by:Mr.V.P.S.Tyagi, Advocate

versus

THE UNION OF INDIA AND ORS Respondents
Represented by:Mr.Ankur Chibber, Advocate

+ W.P.(C) 8094/2012

SHRI BUNDU Petitioner
Represented by:Mr.V.P.S.Tyagi, Advocate

versus

THE UNION OF INDIA AND ORS Respondents
Represented by:Mr.Amrit Pal Singh, CGSC and
Mr.Gurjinder Kaur, Advocate for R-1 to R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. Since, the aforesaid three writ petitions involve a common issue and arise from a common order dated July 20, 2012 dismissing 15 Original Applications including the one's filed by the petitioners herein they are being disposed of by a common order. These writ petitions arise from Original Application No.2523/2011 (*Birmanand v. Union of India & Ors.*), Original Application No.2548/2011 (*Jai Prakash v. Union of India & Ors.*) and Original Application No.2529/2011 (*Bundu v. Union of India & Ors.*).

2. The relevant facts are the petitioners were engaged as casual labours with the respondents. In the year 1996 they were granted Temporary Status in terms of Department of Personnel and Training OM dated September 10, 1993.

3. An Original Application No.652/2011 was filed in the Tribunal which was decided by the Tribunal directing the respondents herein to treat the Original Application as a representation and decide the same within four weeks by passing a detailed and reasoned order.

4. In deference to the orders of the Tribunal the respondents have passed an order dated April 29, 2011 wherein the respondents have said as under:-

“You are hereby also informed that despite all the provisions mentioned above this establishment has followed the para 44 of the Hon'ble Supreme Court judgment in Uma Devi's case as you were given an opportunity for regularization as one time measure by allowing you to participate in the regularization process held in this establishment wef 07 to 12 Jul 2008. In the year 2008, 23 vacancies were released for Group 'C' and 'D'

employees. 18 vacancies were meant for group 'D' and 2/3rd out of 18 vacancies i.e. 12 vacancies were marked for CLTS, the same were duly advertised in the newspaper. Applicant who applied for the regularization was duly considered in accordance with the extant recruitment rules and instructions by an independent Board of officers. Since you were low in merit for regularization as compared to other CLTS as per the recruitment rules, hence you were not regularized into service. In this regards it is further submitted that as per DOP&T O.M. dt. 10.09.1993 only 3rd of vacancies can be filled with casual labour which was done in accordance with Govt Rules in the recruitment. Thus the object of 1993 scheme towards regularization of CLTS is also being followed in letter and spirit. As and when such vacancies are released in future you may again appear for regularization process."

5. It is this order dated April 29, 2011 which have been impugned by the petitioners herein by filing the three different Original Applications, the reference of which has been given above.

6. The substantive grounds on which the petitioners have challenged the OM dated April 29, 2011 *inter alia* are, that the respondents have not taken any steps to implement the mandate of Constitution Bench of the Supreme Court in the case of 2006 (4) SCC 1 Secretary State of Karnataka & Ors. v. Uma Devi & Ors.; the respondents have not taken any steps to adhere to the DOP&T instructions issued vide memorandum dated December 11, 2006; the seniority based on selection is the hallmark of the Supreme Court judgment which is being twisted by the respondents to suit their own whims and fancies.

7. The respondents contested the Original Applications by taking certain preliminary objections which were not agreed to by the Tribunal. On merits the respondents had taken a stand that the petitioners were given an opportunity for regularization as one time measure in terms of Uma Devi's case (supra) by allowing them to participate in the selection held with effect from July 07, 2008 to July 12, 2008, when, out of 18 vacancies, 12 vacancies (being 2/3rd) were marked for the casual labour with Temporary Status. However the petitioners were not successful in the selection post as they were low in the merit as compared to the other casual labours with temporary status as per the Recruitment Rules.

7. The learned counsel or the respondents submit the DOP&T memorandum dated September 09, 1993 has been followed in letter and spirit. They would also submit that as and when vacancies are released in future the petitioners may again appear for regularization.

8. During the course of his submission the learned counsel or the respondents has drawn our attention to the DOP&T OM dated September 10, 1993 wherein in para 8 under the heading *“procedure for filling up group D post”* it is stated that two out of 3 vacancies in group ‘D’ cadre in respective officers where the casual labours have been working would be filling up as per the extent Rules and in accordance with the instructions issued by the Department of Personnel and Training from amongst casual workers with temporary status.

9. That aforesaid position in the OM would make it clear that 2/3rd of the total vacancies are to be filled from amongst workers from temporary status.

10. We see that the respondents have followed the mandate inasmuch as the vacancies in Group 'D' necessarily have to be filled as per the extent Recruitment Rules. It is not the case of the petitioners that the Recruitment Rules have not to be followed. The only submission of the learned counsel for the petitioner is that for a person holding a temporary status the regularization is automatic as per para 53 of the judgment of the Supreme Court in Uma Devi's case (supra).

11. The Supreme Court in its opinion reported as 2009 (13) SCC 90 Harinder Kaur & Ors. v. Union of India & Ors. by referring to para 53 in para 25 has observed as under:-

“We, therefore, are of the opinion that the High Court was correct in its view. We were, however, informed that 800 posts of teachers are lying vacant. Ms. Kamini Jaiswal informed that the Administration is ready and willing to fill up the said posts on a regular basis. While doing so, we have no doubt in our mind that the cases of the appellants shall also be taken into consideration and the Administrator may consider the desirability of relaxing the age-limit provided for in the Rules”.

12. A perusal of para 25 would show that the Supreme Court had laid emphasis on the fact wherever the posts have to be filled up on regular basis the same has to be done as per the Rules. In the case in hand it is clear that the respondents are following the Rules and by relaxing the age of the petitioner, selecting candidates based on

merit. Hence the contention of the petitioners that in terms of para 53 the regularization is automatic is not tenable.

16. We see no reason to interfere with the order of the Tribunal. The writ petitions are dismissed.

17. No costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

August 02, 2013
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