

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.10.2014

+ **W.P.(C) 6086/2000**

DELHI DEVELOPMENT AUTHORITY

..... Petitioner

versus

SMT RANI VERMA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Arun Birbal with Mr Amit Tiwari.

For the Respondents : Mr Rajiv Agarwal, Mr Sachin Sharma and
Ms Neelam Tiwari.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The present petition has been filed by the petitioner seeking quashing of an award dated 22.11.1999 passed by the Industrial Tribunal, Delhi (hereafter the 'impugned award') whereby the Industrial Tribunal directed regularization of respondent no.1 (Rani Verma) as a stenographer in the pay-scale as applicable to that post with usual allowances from the date she was regularized on the post of Mate (i.e. 19.09.1989) and with all consequential benefits.

2. The brief facts of the case that are relevant for examining the controversy in the present matter are as under:

2.1. Respondent no.1's case before the Industrial Tribunal was that she joined the petitioner as a stenographer on 11.03.1983 in place of a permanent employee (Ashok Kumar Ahuja) and, thereafter, worked in different electrical divisions as a stenographer. Respondent no.1 claimed that she was appointed as a stenographer after completing all the formalities, tests and interviews and she should have been regularised on the post of stenographer after successfully completing 90 days probation period. However, instead of regularizing her on the post of stenographer (which was stated to be Class III post), the petitioner designated her as Work Charge Mate (which was stated to be Class IV post). It was claimed by respondent no.1 that she never worked on the post of Beldar or Mate. Respondent no.1 also alleged that she was paid wages for skilled workers as per the Minimum Wages Act, 1948 which was stated to be lower than the pay scale of a regular stenographer, although her work and working hours were same as that of a regular/permanent stenographer.

2.2. Respondent no.1 alleged that the action of the petitioner amounts to unfair labour practice under Section 2(ra) read with Item 10 of List I of Fifth Schedule of the Industrial Disputes Act, 1947. Therefore, respondent no.1 raised an industrial dispute before the Industrial Tribunal (I.D. No.119/96) seeking regularization on the post of stenographer (Class III) w.e.f from 11.03.1983 with consequential benefits.

2.3. During the pendency of the proceedings in I.D. No.119/96, the service conditions of respondent no.1 were changed by the petitioner by regularizing her as a billing-clerk. Therefore, respondent no.1 filed a

complaint (Complaint I.D. No. 24/96) under Section 33A of the Industrial Disputes Act, 1947 before the Industrial Tribunal.

2.4. The petitioner's case before the Industrial Tribunal was that on 11.03.1983, respondent no.1 was engaged by the petitioner as a casual stenographer on muster roll basis and was paid minimum wages as fixed by the Delhi Administration. It was stated that respondent no.1 worked as a stenographer in different electrical divisions till 19.09.1989 when muster roll staff was converted to the post of Mate (Workcharged). It was stated that the post of Mate was offered to respondent no.1 on 09.10.1989 and the said offer was accepted by her by a letter dated 20.10.1989. Thereafter, the petitioner issued an Establishment Order dated 20.12.1989 confirming the appointment of respondent no.1 on the post of Mate (Workcharged) w.e.f. 19.09.1989. It was stated by the petitioner that respondent no.1 never worked on the post of stenographer after her conversion on the post of Mate. It was stated that respondent no.1 worked as Mate in Electrical Division No.10 till 02.04.1994 and was subsequently transferred to S.E.(E)-2 under the same capacity. On 04.04.1994, respondent no.1 submitted her joining report.

2.5. It was stated by the petitioner that on various occasions vacancies for regular stenographers were created and applications from departmental candidates were invited. Although respondent no.1 appeared for the tests on two occasions, she failed to qualify. Thereafter, respondent no.1 raised an industrial dispute seeking regularization on the post of stenographer.

2.6. The Industrial Tribunal applied the principle of equal pay for equal work and by the impugned award, allowed the reference in favour of respondent no.1 and directed for regularization of respondent no.1 as a stenographer from the date when she was regularized as a Mate i.e. 19.09.1989 along with all consequential benefits.

Submissions of petitioner

3. The learned counsel for the petitioner contended that respondent no.1 accepted the post of Mate by her letter dated 20.10.1989 without protest and performed the duties associated with the post of Mate, therefore, respondent no.1 cannot now seek regularization on the post of stenographer and the claim of regularization was highly belated and unexplained as it was raised for the first time in the year 1995 almost after a lapse of six years since she accepted the appointment of Mate.

4. It was further contended that in the claim for regularization, court generally passes the directions to frame scheme or rules taking note of the seniority of all persons, who would be affected by the regularization. And in the present case, regularization after such a long delay would upset the seniority of persons who are not made parties to the proceeding and seniority being a civil right cannot be taken away without giving a hearing to those persons.

5. It was contended by the petitioner that the plea of respondent no.1 for regularization on post of stenographer is not maintainable and the case of respondent no.1 is squarely covered by the decision of this Court in **Bijender Singh v. DDA: W.P.(C) No.4542/2005, decided on 20.12.2006**

wherein the plea of workmen for regularization on the higher post and equivalent salary to higher post was rejected. In alternative, the learned counsel for the petitioner contended that the regularization claimed by respondent no.1 is also against the principles laid down by the Supreme Court in **Secretary, State of Karnataka and Ors. v. Umadevi and Ors.:** (2006) 4 SCC 1 as it is for appointment through the mode of regularization simpliciter.

6. The learned counsel for the petitioner relied upon the decision of the Supreme Court in **State of Haryana v. Jasmer Singh:** (1996) 11 SCC 77, and decision of this Court in **Rajbir Singh v. D.D.A.:** 2007 (95) DRJ 300 in support of its contention that an employer is not bound to pay higher scale of higher post to the employee who was working on higher post and the principle of equal pay for equal work is not applicable in such a situation.

Submissions of respondent

7. The learned counsel for respondent no.1 submitted that she was placed in a highly unequal bargaining position and in the circumstances could not protest on account of not being regularised as a stenographer at the material time. Therefore, the delay in raising the claim of regularization should be overlooked. It was submitted that there should be years of continuing unfair labour practice on part of the employer to establish the case of unfair labour practice.

8. It was contended that the case of **Umadevi** (*supra*) is not applicable in the present case, as the same is only applicable to higher courts exercising writ jurisdiction under Articles 32 and 226 of the Constitution of

India and not to the Industrial Courts or Tribunals. In support of this contention, the counsel relied upon the judgment of the Supreme Court in **Maharashtra State Road Transport Corporation and Anr. v. Casteribe Rajya P. Karmchari Sanghatana**: (2009) 8 SCC 556 and **State of Karnataka and Ors. v. Ganapathi Chaya Nayak and Ors.**: (2010) 3 SCC 115. The counsel further sought to draw a distinction between industrial and service branches of law, to show that *Umadevi* (*supra*) was relevant only in the branch in the service law and had no application in industrial jurisprudence. The counsel relied on **Bidi, Bidi Leaves' and Tobacco Merchants Association v. The State of Bombay**: AIR 1962 SC 486, to show the wide jurisdiction of the Industrial Tribunals, including the powers to create new rights.

9. The learned counsel for respondent no.1 submitted that the facts of *Bijender Singh* (*supra*) are different and the said decision is not applicable to the present case as in the present case, respondent no.1 was appointed against a post vacated by permanent employee (Ashok Kumar Ahuja). Respondent no.1 contended that the rights of other employees would not be affected on regularizing her services as stenographer as she does not seek retrospective seniority, but she is entitled to all other benefits and privileges atleast from the date of her regularization, as held by the Tribunal.

10. It was further contended that the award passed in relation to Section 33A of the Industrial Disputes Act, 1947 did not suffer from any infirmity in light of the decision of the Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Ors.**: 2002 (2) SCC

244 and of this Court in **Tops Security Ltd. v. Subhash Chander Jha**: LPA No.1044/2011.

Analysis and conclusion

11. The controversy to be addressed in the present petition is whether in the given facts and circumstances, a direction for regularisation of respondent no. 1 on the post of stenographer ought to have been issued.

12. A Constitution Bench of the Supreme Court in ***Umadevi (supra)*** laid down the principle that if the original appointment of an employee was not made by following a due process of selection then such employee cannot be absorbed in regular service or made permanent merely on the ground that the said ad hoc employee has worked beyond his term of appointment or has worked on a higher post for a considerable period without being regularized on the said higher post. And, if the said temporary appointee gets regularized on the post, it will lead to jettisoning the constitutional scheme of appointment and would be violative of Article 14 of the Constitution of India. It was also observed that even the principle of “equal pay for equal work” could not be applied by the courts to direct that appointments made without following the due procedure established by law, be treated as permanent.

13. The applicability of the principles laid down by the Supreme Court in ***Uma Devi’s Case (supra)*** on the industrial adjudication was considered by the Supreme Court in **U.P. Power Corpn. Ltd. v. Bijli Mazdoor Sangh**: (2007) 5 SCC 755. It was held that whilst, the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something

which is violative of Article 14 of the Constitution of India and dilute the observations made in *Uma Devi's Case (supra)*. The relevant extract of the said decision is quoted as under:-

“6. It is true as contended by learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi (3) case. But the foundational logic in Umadevi (3) case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularisation, the same cannot be viewed differently.

7. There cannot be a case for regularisation without there being employee-employer relationship. As noted above the concept of regularisation is clearly linked with Article 14 of the Constitution. However, if in a case the fact situation is covered by what is stated in para 45 of Umadevi (3) case the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi (3) case about the regularisation.”

14. The Supreme Court in *Maharashtra SRTC v. Casteribe Rajya Parivahan Karmchari Sanghatana*: (2009) 8 SCC 556 observed that *Umadevi (supra)* does not denude the Industrial and Labour Courts of their statutory power provided under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 to order permanency of the workers who have been victims of unfair labour practice. It was also observed that inaction on the part of the employer to create posts would not amount to unfair labour practice. The relevant extract is quoted as under:-

“35. Umadevi (3) is an authoritative pronouncement for the proposition that the Supreme Court (Article 32) and the High Courts (Article 226) should not issue directions of absorption, regularisation or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees unless the recruitment itself was made regularly in terms of the constitutional scheme.

36. Umadevi (3) does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi (3) cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established.”

15. In view of the above, the contention advanced by the learned counsel for respondent no.1 that the decision in *Uma Devi (supra)* would not dilute the power of an Industrial Tribunal to grant a proper relief of regularization where unfair labour practice has been established, is well founded. However, it is equally clear that Industrial Tribunal while passing an award has also to bear in mind whether regularizing a workman would be unfair to other workman/employees and would fall foul of Article 14 of the Constitution of India.

16. Recently, the Supreme Court in the case of *Hari Nandan Prasad v. Food Corporation of India*: (2014) 7 SCC 190 examined the decisions passed in *U.P. Power Corpn. Ltd.* (supra) and *Maharashtra SRTC* (supra) and held as under:-

“39. On a harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularisation only because a worker has continued as daily-wage worker/ad hoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularisation would be impermissible. In the aforesaid circumstances giving of direction to regularise such a person, only on the basis of number of years put in by such a worker as daily-wager, etc. may amount to back door entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the recruitment rules. However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.

40. The aforesaid examples are only illustrative. It would depend on the facts of each case as to whether the order of regularisation is necessitated to advance justice or it has to be denied if giving of such a direction infringes upon the employer's rights.”

17. In the present case, it is apparent that respondent no.1 was not recruited as a Stenographer through regular procedure. The petitioner is a statutory body and recruitment of employees is required to be done in a

transparent manner and according to the bye-laws. Although, respondent no.1 has asserted that she had joined the employment of petitioner against a valid and vacant post of Stenographer, it cannot be disputed that her recruitment was not through regular process and according to bye-laws. It is also admitted that the petitioner was offered regularization on the post of Mate by establishment order dated 20.12.1989 w.e.f. 19.09.1989. This was, admittedly, accepted by her. In the given facts, it is not disputed that the petitioner after working for several years had accepted to be regularized at the post of a Mate. After being regularized at a post, the attempt of respondent no.1 was to now seek regularization at a higher post.

18. The petitioner had, in its written statement filed before the Industrial Tribunal, also pointed out that respondent no.1 had appeared for the test conducted by the Department for the post of stenographer at least on two occasions but could not qualify in the said written test and was consequently not selected for the post of a stenographer. The petitioner has also affirmed in the petition that respondent no.1 had appeared for the test and an interview conducted for the post of a regular/permanent stenographer, however, she had failed the test. This fact had not been considered by the Industrial Tribunal. Respondent no.1 has asserted that the contents of paragraph 7 of the petition are wrong. Although, respondent no.1 has generally controverted the petitioner's pleadings, there is no unequivocal statement that respondent no.1 had not appeared as a departmental candidate for the post of Stenographer or had appeared and cleared the test. The learned counsel for the petitioner had also during the course of arguments laid specific emphasis on this fact which was not

contested by the learned counsel for respondent no.1. The learned counsel for respondent no.1 had submitted that even if respondent no.1 had appeared for the post of Stenographer and could not qualify, the same would not take away her right to be appointed as a Stenographer which has accrued in her favour by virtue of her working in the same position for several years. In the given circumstances, it must be accepted that the petitioner had failed to qualify the regular process for being appointed as a Stenographer.

19. Viewed in the above context, regularizing respondent no.1 on the post of a Stenographer would in effect amount to providing a backdoor entry to respondent no.1 into the regular service of the petitioner at a post to which respondent no.1 has been unable to qualify. This is precisely the controversy that was addressed by the Supreme Court in ***Uma Devi*** (*supra*). In my view, regularizing respondent no.1 would fall foul of Article 14 of the Constitution of India given that the petitioner has a regular recruitment process by which vacancies are to be filled. Even though, the Industrial Tribunal would have the power to regularize employees in certain cases of unfair labour practice, the Industrial Tribunal erred in not considering the prejudicial effect of regularization on other employees (prospective employees) aspiring for regular appointment to the post.

20. This Court in ***Bijender Singh*** (*supra*) had, *inter alia*, set aside the award regularizing workmen to the post of LDC who had otherwise not been recruited either directly or through promotion on the said post. The rationale of the said decision would also be applicable in the facts of the present case.

21. Accordingly, the writ petition is allowed and the impugned award is set aside.

VIBHU BAKHRU, J

**OCTOBER 29, 2014
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