

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No.2009/2000
% **18th February, 2015**

SH. SRI RAM MANN Petitioner

Through: None.

versus

DELHI STATE IND. DEV. CORPN. & ORS. Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appeared on behalf of the parties, although it is 12.45 PM. I have therefore perused the record and am proceeding to dispose of the petition.

2. Petitioner, an employee of the respondent no.1 and earlier of the respondent no.2/Delhi State Mineral Development Corporation, by this writ petition, seeks the following reliefs:-

“a) hold that the order of termination dt. 30.6.93 is illegal, invalid, arbitrary, discriminatory, mala fide and inoperative. The same may be quashed. The petitioner be treated in continuous service during the period from 1.7.93 to 18.8.96 holding that his services were never

lawfully terminated. Respondents may be called upon to pay salary & allowances and other benefits for the aforesaid period from 1.7.93 to 18.8.96 with increments for the said period;

b) hold that the petitioner has been in regular service from 17.9.85 onwards and he is entitled to all consequential benefits by way of increments in pay and other benefits etc.

c) call upon the respondents to place the petitioner at appropriate stage in his pay scale as AG-III from 17.9.85 after adding up increments due to him;

d) call upon the respondents to place the petitioner at appropriate place in the seniority list of AG-III while treating his date of appointment as 17.9.85;

e) call upon the respondents to give promotion to the petitioner to the post of AG-II with all consequential benefits together with increments etc. from the date when incumbents junior to him were promoted including Shri Raja Ram to the said post of AG-II while treating the date of the appointment of the petitioner as 17.9.85 with continuity in service;

f) direct the respondents to pay the entire arrears with interest @ 18% per annum from the date when by issuance of writ of certiorari, mandamus or any other appropriate writ, order, rule or direction.

Any other benefit which may be deemed fit and proper in the facts and circumstances of the case may also be granted together with costs.”

3. A reference to the aforesaid reliefs shows that the petitioner claims regularization and consequential benefits from 17.9.1885 and in the alternative, also claims that he should be taken in service with the respondent no.1 not from 18.8.1996 but from 1.7.1993.

4. A reading of the writ petition alongwith its annexures and the counter-affidavit alongwith its annexures shows that the petitioner was only appointed on *ad hoc* basis with the respondent no.2 on 26.11.1985. Once the petitioner's appointment was purely on *ad hoc* basis, petitioner cannot claim regularization, that too retrospectively from 1985, in view of the ratio of the Constitution Bench judgment of the Supreme Court in the case of ***Secretary, State of Karnataka Vs. Umadevi & Ors. (2006) 4 SCC 1*** which lays down the following ratio:-

“(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

(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”.

5. Petitioner therefore cannot claim regularization, that too retrospectively from the date of his *adhoc* appointment on 26.11.1985. I may note that petitioner has been appointed again on *adhoc* basis with the respondent no.1 in 1996 as a case of compassionate employment in view of the petitioner earlier having filed a writ petition, and thereafter, the Chief Secretary of Delhi Administration, in view of the observations of a Division Bench of this Court, appointed the petitioner on compassionate grounds with the respondent no.1.

6. Therefore, a reading of the writ petition and the counter-affidavit shows that petitioner's services both with respondent no.1 and respondent no.2 were only on *adhoc* basis, and therefore, there does not arise issue of regularization of the services of the petitioner i.e giving permanent appointment to the petitioner much less retrospectively either from 1993 or from 1985 as prayed for in the writ petition. I may state that the petitioner was given only *adhoc* employment with the respondent no.1 because petitioner at the time of joining of the corporation was 42 years of age and the age limit for direct recruitment in the respondent no.1-corporation was 25 years and for which no relaxation could be given.

7. A resume of the above shows that petitioner after termination of his *ad hoc* services with the respondent no.2 was purely on compassionate ground given fresh *ad hoc* appointment with the respondent no.1, and subsequently, petitioner has been regularized with respondent no.1 at Assistant Grade (AG)-III in the pay scale of Rs. 3050-4590 w.e.f 25.5.1998. Petitioner therefore now stands regularized, and the petitioner cannot claim regularization from a retrospective date in view of the ratio in the case of *Umadevi(supra)* .

8. There is hence no merit in the writ petition, and the same is therefore dismissed.

FEBRUARY 18, 2015
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VALMIKI J. MEHTA, J.