

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

+ **W.P.(C) No.6506/2002**

% **25th May, 2015**

DR. SANJEEV BANSAL & ORS. Petitioners

Through: None.

Versus

UNIVERSITY OF DELHI & ORS. Respondents

Through: Mr. Anurag Mathur, Adv. for R-1 and
2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the petitioners although it is 1.05 P.M. This case is on the regular board of this Court since 9.3.2015. Petitioners were appointed as *ad hoc* teachers by the respondent no. 3/College/Maharaja Agrasen College, and they seek the relief that they should be regularized to the posts and the appointments made of other persons be cancelled (initially respondent nos. 6 to 9).

2. In the counter affidavit filed by the respondent no. 3/College/Maharaja Agrasen College, it is specifically stated that the persons who were appointed as Lecturers were appointed in terms of the regular recruitment process to the regular posts after issuing advertisement. It is stated that even petitioners appeared before the Selection Committee but petitioners were not selected, and therefore, could not be appointed. Regular appointment in the Department of Mathematics is stated to have been completed on 20.11.2002 and in the Department of Hindi on 22.11.2002. It is therefore stated that the petitioners cannot challenge the regular appointments made by the respondent no. 3/College/Maharaja Agrasen College pursuant to an open advertisement and following the due process of the law.

3. A Constitution Bench judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others 2006 (4) SCC 1* has laid 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 calling all possible persons and which process involves inter-se competition among the candidates.

(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.”

4. The Constitution Bench judgment of the Supreme Court in *Umadevi's (supra)* case therefore makes it clear that at the instance of *ad hoc* or contractual or irregular appointment the process of regular recruitment cannot be stopped. Once the respondent no. 3/College/Maharaja Agrasen College has made regular appointments in regular posts by following a due process including issuing of an advertisement for the posts, and in which process petitioners also appeared but were not selected, petitioners cannot claim entitlement to regularization or to continue in the *ad hoc* posts' appointments.

5. Dismissed.

MAY 25, 2015
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VALMIKI J. MEHTA, J