

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

+ **W.P.(C) No.1727/2012**

% **22nd April, 2015**

SHRI SATYA PAL SINGH DABAS AND ANR. Petitioners
Through: Mr. Preet Pal Singh, Advocate.

Versus

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
AND ANR. Respondents
Through: Mrs. Avnish Ahlawat, Advocate.

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 under Article 226 of the Constitution of India is filed by the two petitioners seeking regularization of their services with the employer/respondent no.2/Delhi Agricultural Marketing Board.

2. Petitioner no.1 was appointed on 22.9.1988 on daily wage basis and petitioner no.2 was also appointed on daily wage basis on 11.7.1988. Petitioners' services were illegally terminated on 21.8.1993 and therefore petitioners approached the Labour Court which directed their reinstatement. This award of the Labour Court is dated 31.1.2002. The

challenge of the respondent no.2 to the award of the labour court was dismissed by a learned Single Judge of this Court on 8.8.2003 in CWP No.649/2003 titled as ***Delhi Agricultural Marketing Board Vs. Satya Pal Singh Dabas & Anr.*** Accordingly, petitioners were reinstated by the respondent no.2 issuing the following office orders dated 7.5.2004 and 31.5.2004:-

“Order dated 7.5.2004

14(78)/98/DAMB/Mktg/205/

Dt. 7-5-04

ORDER

Sh. Satyapal Singh Dabas & Sh. Rajinder Kumar were engaged as Chowkidar on daily wages w.e.f. 22.9.88 and 11.7.88 respectively. Services of both the officials were terminated w.e.f. 20.8.93.

Whereas, both the officials aggrieved by the said order of termination filed a case in the Labour Court of Delhi. The Hon’ble Labour Court in its award dt. 30.1.02 ordered for reinstatements of both the employees with back wages @ 50% of last drawn wages from the date of their termination.

Whereas Delhi Agricultural Marketing Board filed a CWP in the Hon’ble High Court of Delhi against the award of Hon’ble Labour Court in ID No.1618/94 titled DAMB Vs. Sh. Satya Pal Singh Dabas and another vide CWP no.649/2003 which was dismissed by the Hon’ble High Court of Delhi vide order dt. August 8, 2003.

Whereas Delhi Agricultural Marketing Board filed a SLP in the Supreme Court of India against the said order of Hon’ble High Court dt. August 8, 2003 vide no.5872 of 2004 in the matter of DAMB Vs. Satya Pal Singh Dabas and another which has been dismissed on April 5, 2004 by the Hon’ble Supreme Court.

In view of the above, Sh. Satyapal Singh Dabas and Sh. Rajinder Kumar are hereby reinstated on the post of Chowkidar on daily wages from the date they report for duty in this office. They be also paid back wages @ 50% of the last drawn wages from the date of their termination.

This issues with the approval of competent authority.

Sd/-
(P.S. YADAV)
DY. SECRETARY

1. **Sh. Satyapal Singh Dabas**
S/o Sh. Mange Ram,
H. No.88, Majra Dabas,
Delhi-110081
2. **Sh. Rajinder Kumar,**
S/o Late Sh. Harveer Singh,
R/o R-3/A3/39, Mohan Garden,
Uttam Nagar,
Delhi-59.

Copy to:-

1. Sr. A.O. DAMB for necessary action in the matter.
2. Sh. A.K. Verma, Advocate, B-655, Mayur Vihar, Phase-I, Delhi-91, with reference to his letter dated 24/4/2004 with the request that a copy of the order of Hon'ble Supreme Court may kindly be procured and sent to this office.

(P.S. YADAV)
DY. SECRETARY

Order dated 31.5.2004

Ref. 20012 (34)/04/DAMB/Estt.2696-2701

Dated 31/5/04

ORDER

In pursuance of Ld. Labour Court award dt. 30.1.02 and reinstatement order no.14(78)/98/DAMB/Mktg/2051-2054 dt. 7.5.2004 and joining report dt. 12.5.04, S/Sh. Hajender Kumar and Satyapal Singh, Chowkidars (daily wager) are hereby reinstated and taken on the strength of DAMB w.e.f. 12.5.04 (F/N)

This has the approval of the competent authority.

Sd/-
(P.S. YADAV)
DY. SECRETARY (Admn.)

1. Sr. A.O. DAMB
2. OSD to Chairman, DAMB
3. Sr. P.A to V.C. DAMB
4. Individual concerned Sh. Rajender Kr.
5. Guard/personal file”

3. As per para 53 of the judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others (2006) 4 SCC 1* all persons who were irregularly appointed and had worked for 10 years prior to the passing of the judgment in the case of *Umadevi and Others (supra)* were entitled to be regularized if they had worked without benefit of interim orders of a court. In the present case, it is not as if the petitioners continued for 10 years with an interim order of a court, because, the petitioners have succeeded and their reinstatement was directed by a final judgment, and therefore, the present is not a case where petitioners continued in services by virtue of an interim order of the court and only in which circumstance they cannot be regularized in terms of para 53 of the

judgment in the case of *Umadevi and Others (supra)* and which para 53 reads as under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore v. S.V. Narayanappa : AIR 1967 SC 1071*, *R.N. Nanjundappa v. T. Thimmiah : (1972) 1 SCC 409*, and *B.N. Nagarajan v. State of Karnataka : (1979) 4 SCC 507*, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.” (emphasis added)

4. In accordance with the aforesaid paragraph in the case of *Umadevi and Others (supra)*, once appointment of the petitioners was only irregular, and not illegal, petitioners were entitled to be regularized. That petitioners’ appointments were only irregular and not illegal becomes clear

from the Minutes of the Meeting of the committee constituted by the respondent no.2 which on 7.7.2009 observed as under:-

“

Sr. No.	Name and Designation of the official	Recommendation of the Committee
xxxx	xxxx	Xxxx
4.	Rajender Kr., Chowkidar	The committee was informed that these two fulfilled the RRs at the time of their initial engagement. It could not be established whether there were clear sanctioned vacancies at the time of initial engagement and whether these two cases are subjudice or not. Therefore, the committee recommends that status of vacancy at the time of initial engagement, period of litigious employment and court orders if any may be considered administratively. If it is established that there were sanctioned vacant post at the time of engagement and are covered under the 10 year period as per the court judgment, administrative decision may be taken for the regularization.
5.	Satyapal Singh, Chowkidar	

”

5. No doubt, another sub-committee changed the recommendations in terms of the Minutes of the Meeting dated 28.8.2009, but as stated hereinafter the same is of no effect. The relevant observations made by the sub-committee on 28.8.2009 against the petitioners read as under:-

“

Name of Employee	Recommendations
xxxx	xxxx
Sh. Rajender Kumar and Sh. Satpal Dabas, Chowkidars	The cases of these two chowkidars were reviewed and the Committee was informed that these two were engaged against the project on daily wage basis and the project is long over. In such circumstances they can not be recommended for regularization in view of the order of the Apex Court in the case of Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors passed by the Apex Body.

”

6. I find that the Minutes of the Meeting dated 28.8.2009 are vague inasmuch as what was the project to which petitioners were appointed is not stated and even in the counter affidavit filed by the respondent no.2, the name of the project is not stated. In the counter affidavit of the respondent no.2 all that is stated is that petitioners were appointed against a watch and ward project but the watch and ward project by its very description is perennial in nature. Therefore, there is nothing on record that petitioners were only appointed against a specific project as is stated on behalf of respondent no.2.

7. In view of the above, it is clear that petitioners' appointments were only irregular and not illegal. Petitioners are therefore entitled to benefit of the ratio of para 53 of the judgment in the case of *Umadevi and*

Others (supra) and in fact so also noted by the respondent's committee's Minutes of the Meeting dated 7.7.2009.

8. Finally, I may note that petitioners have filed before this Court the reply to RTI query given by the respondent no.2 dated 11.2.2015 and which shows that there were vacancies available in the sanctioned posts from January, 2010 to December, 2014, and which position with respect to vacancies was also there for the earlier period when the petitioners were appointed in the year 1988 as shown in the letter of the respondent no.2 dated 19.11.2013 filed by the petitioner with the list of documents dated 17.12.2013. The relevant portion of this letter dated 19.11.2013 reads as under:-

**“Delhi Agricultural Marketing Board
(Govt. of NCT of Delhi)
9, Institutional Area, Pankha Road,
Janakpuri, New Delhi-110058
Tel:-28521032, 28524420 Fax:-011-28525771
E-Mail:-ambdl@nic.in, Website:-www.delagrmarket.nic.in**

RTI ACT, 2005
MOST URGENT
OUT TODAY

No.15/102/2013/RTI/DAMB 15142

Dated 19/11/13

To

Sh. Satya Pal Singh Dabas
68, Village & PO, Majra Dabas,
Delhi-110081

Sub:- Information under RTI Act 2005.

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Sir,

With reference to your application dated 21.10.13 received in this office on 23.10.13 under RTI Act, 2005, the requisite information are given as under:-

Reply to question No.1.	Copy can be provided on payment of Rs.4/-
Reply to question No.2.	Number of sanctioned post prevailing at the time applicant joined the DAMB on 22 nd Sept. 1988. i) Chowkidar-15 ii) Peon-21
Reply to question No.3	The information regarding vacancy position as on 22 nd Sept. 1988 for the posts of Chowkidar and Peon is not traceable. However as per information compiled from the available record at that time 3 posts of Chowkidar and 12 posts of Peon were filled. Therefore, the vacancy position works out as under:- i) Chowkidar-12 ii) Peon-09

”

9. In view of the above, there were sanctioned posts, vacancies in sanctioned posts, and petitioners were qualified and they continued for 10 years prior to the passing of the judgment in the case of ***Umadevi and Others (supra)*** and hence they were entitled to regularization.

10. The writ petition is accordingly allowed. Respondent no.2 is directed to regularize the petitioners w.e.f 30.3.2012, the date which is conceded as the date for seeking regularization by the counsel for the petitioners in terms of the statement made before this Court today on instructions from the petitioners who are present in the Court. Petitioners

now will get the consequential benefits including the monetary benefits from the respondent no.2 of regularization from 30.3.2012 within a period of three months from today.

APRIL 22, 2015
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VALMIKI J. MEHTA, J