

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

*Judgment Reserved on: November 18, 2015*

% *Judgment Delivered on: November 30, 2015*

+ **LPA 855/2013**

DAULAT RAM & ORS

..... Appellant

Represented by: Ms.Rachna Joshi Issar,  
Advocate.

versus

NATIONAL OPEN SCHOOL & ANR

..... Respondents

Represented by: Mr.S.Rajappa, Advocate for R-  
1.  
Mr.Apoorv Kurup and  
Mr.Rohit Rathi, Advocates for  
R-2.

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Daulat Ram and five others filed a writ petition being W.P.(C) No.3789/2010 inter-alia praying for quashing of the order dated March 01, 2009, seeking regular appointment and also directions to the respondent to give employment to the appellant and others at its regional centre in terms of the order dated September 09, 2002. W.P.(C) No.3789/2010 was a sequel to an earlier writ petition filed by Daulat Ram and other petitioners being W.P.(C) No.2933/1999 wherein directions were sought to continue to engage the petitioners therein as casual labourers and not to engage fresh casual labourers in place. Daulat Ram and others also sought implementation of the scheme of regularization which was in vogue by the

Government of India.

2. W.P.(C) No.2933/1999 was disposed of pursuant to the statement of the learned counsel for the National Open School (in short the NOS) who stated that NOS conducts two exams every year for which purpose it engages casual labour and it had stopped recruiting any casual labour Class IV at New Delhi as the work had been assigned to the regional offices of NOS. Learned counsel stated that option could be given to the writ petitioners therein to work at the regional offices without payment of fares to the place of their work. The writ petition was disposed of with these directions:

*“To my mind this offer of the respondent No.2 is fair. Those of the petitioners who would like to join the regional offices for work whether it is seasonal, the respondent No.2 will give an option to such petitioners who accept offer of respondent No.2 of working at those places without being paid any fare, if the work is of permanent nature, respondent No.2 will give relaxation in age and due weightage to the petitioners for considering them for a regular post. It is also directed that in case respondent No.2 employs any casual labourer (class IV) in Delhi office, they will offer such employment to the petitioners according to the seniority list maintained by respondent No.2 in the first instance.*

3. Daulat Ram and others also filed a contempt petition before this Court being Contempt Case No.916-21/2006 which was disposed of on May 11, 2009 noting the statement of learned counsel for the respondent that in accordance with Para 5 of their reply affidavit and in compliance of this Court's order dated November 24, 2005 the respondent was sending letters to persons as named in the seniority list to find out their willingness to work in NOS headquarters/ regional centres as per requirement. The contempt

was disposed of as not pressed by learned counsel for the appellant.

4. After the disposal of the W.P.(C) No.6303/1999 the respondent issued an advertisement inviting applications for the post of Peon/Mali on direct recruitment basis as under:

| <i>Sl.</i> | <i>Name of the post</i> | <i>Pay scale (Pre-revised)</i> | <i>No. Of Post(s)</i>  | <i>Age</i>                                                       |
|------------|-------------------------|--------------------------------|------------------------|------------------------------------------------------------------|
| <i>1.</i>  | <i>Peon/Mali</i>        | <i>2550-3200</i>               | <i>2 (UR-I, OBC-1)</i> | <i>Below 37 years (only for the purpose of this recruitment)</i> |

5. Pursuant to this advertisement Shri S.Sathiah was appointed as Peon vide office order dated May 01, 2009. The grievance of Daulat Ram and 5 others in W.P.(C) No.3789/2010 was that having been engaged as daily-wager approximately from 1997 they had completed 240 days and despite order dated September 09, 2002 passed in W.P.(C) No.6303/1999 and the seniority list was defective, the respondents instead of appointing the petitioners at the regional centres terminated their services in October 2002 itself and started employing casual employees at will. It is pleaded that by office order dated May 01, 2009 regular employment was granted to one S.Sathiah as Peon without even calling the petitioners for participating in the process of selection.

6. The learned Single Judge vide the impugned judgment dated April 09, 2013 dismissing W.P.(C) No.3789/2010 held that the relief of regularization was barred by the ratio of Constitution Bench judgment of the Supreme Court in (2006) 4 SCC 1 Secretary, State of Karnataka Vs. Umadevi & Ors. It also noted that the relief of permanent employment was being claimed for Daulat Ram only though there were six petitioners and that Daulat Ram was not called for the interview though he submitted his application dated

January 30, 2009 for the reason post of Peon was a reserved post and Mr.S.Sathiah was a reserved candidate and Daulat Ram was not. As regards violation of order dated September 09, 2002 passed in W.P.(C) No.6303/1999 was concerned, the learned Single Judge held that no relief could be maintained by a fresh petition and only a contempt petition lies against non-compliance of the earlier order of this Court.

7. Before this Court learned counsel for the appellant urges that the plea of respondent that the post of Peon was reserved for OBC and that of Mali was unreserved was clearly an after-thought and not born out from the advertisement.

8. A perusal of the advertisement as noted above in Para 4 does not reveal whether the post of Peon or that of Mali was reserved. Admittedly Daulat Ram is a general category candidate and even if there is an ambiguity in the advertisement it has been duly explained that the post of Peon was reserved for OBC and the appellant who was not an OBC was not eligible to hold the post and thus not called for the interview. A perusal of the advertisement shows that one post was unreserved and one was OBC. Though it would have been advisable to the respondents to have separately advertised the two posts or clarify the same but be that as it may, the explanation rendered by the respondent is not unwarranted in the facts of the case. In this background the non-calling of appellant Daulat Ram for the interview to the post of Peon advertised on January 23, 2009 cannot be faulted. Thus no case is made out for quashing of the order dated May 01, 2009 granting appointment to Shri S.Sathiah.

9. Further grant of appointment to S.Sathiah on the post of Peon cannot be a reason to grant regularization to the appellant Daulat Ram. As regards

the relief of appointment at the regional centres is concerned there is already a direction passed by this Court in W.P.(C) No.6303/1999 and same direction is not required to be repeated. We find no merit in the appeal.

10. The appeal is dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**NOVEMBER 30, 2015**  
**‘ga’**