

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

% *Date of decision: July 15, 2015*

+ **LPA 104/2014**

S K TRIPATHI

..... Appellant

Represented by: Ms.Arati Mahajan and
Mr.Manoj Kumar, Advocates.

versus

SECY. AGRICULTURE PRODUCE

MARKET COMMITTEE BOARD & ORS

..... Respondents

Represented by: Ms.Avnish Ahlawat and
Ms.Latika Chaudhary,
Advocates for Respondent
Nos.1 and 2.
Ms.Jyoti Taneja, Advocate for
Respondent No.3.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The Appellant S.K.Tripathi filed a writ petition challenging the termination order dated October 27, 1998 and seeking a writ of mandamus directing the Respondents to regularise his services as he had already served for more than ten years. The case of S.K.Tripathi was that despite directions by the Supreme Court dated August 30, 1988 the Respondents failed to regularise him and on false allegations that S.K.Tripathi took bribe of ₹2 from some drivers his services were terminated.

2. Vide the impugned order dated July 22, 2013 the learned Single Judge dismissed the writ petition, that is, W.P.(C) No.5515/1998 following the decision reported as 2006 (4) SCC 44 *Secretary, State of Karnataka and*

Ors.vs.Umadevi and Ors. The learned Single Judge held the issue before him was not of taking bribe but whether the regularisation of contractual employee could be directed and that in the writ petition there was no averment of the existing sanction post, vacancies in the sanctioned post and whether the recruitment was through the regular recruitment process. Since S.K.Tripathi was only a daily wager he cannot be regularised in terms of the ratio of Umadevi (supra). The learned Single Judge in the impugned order dated July 22, 2013 did not advert to the main contention in the writ petition that a petition was filed in the Supreme Court in 1996 by the Union namely *Daily Wagers Union and others vs. Delhi Administration and others* wherein the Supreme Court vide its order dated August 30, 1988 had directed the Respondents to consider the case of 132 workers including S.K.Tripathi for regularisation and that their services will not be terminated until their cases for regularisation were considered. It would be relevant to note the decision of the Supreme Court which is reproduced as under:

*“IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION NO.649 OF 1986*

Daily Wagers Union & Ors.

...Petitioners

Versus

Delhi Admn.& Ors.

...Respondents

ORDER

The petitioners in this petition are the daily wage workers working for the Delhi Agricultural Produce Marketing Committee. Their trade Union is also a petitioner in this petition. The principal prayer of the petitioners in the petition is that their services should be regularised and

that they should be appointed on substantive basis since they have been rendering the services as casual labourers for nearly six to seven years. The members of the trade Union were 591 in the year 1986, when this petition was filed.

Shri Tapas Ray, learned counsel for Delhi Agricultural Marketing Produce Committee submits that after this petition was filed the services of 568 daily wage earners working under the Committee belonging to different categories have already been regularised against substantive vacancies and that there are only 132 daily wage earners whose services have still to be regularised. He further submits that steps will be taken as early as possible by the Committee to regularise the services of these remaining 132 workers also depending on the availability of the vacancies and that unless and until the cases of these 132 workers are considered for regularisation the Committee will not submit any outsider in the place of any of them. He further submits that the services of these 132 persons will not also be terminated until their cases for regularisation are considered. We feel that the submission made by Shri Tapas Ray, learned counsel for the Committee meets the requirements of this petition. We direct the Committee to comply with the submission made on its behalf by Shri Ray as early as possible.

The Writ Petition is disposed of accordingly. No cost.

*Sd/-
.....J.
(S.S.Venkataiah)*

*Sd/-
.....J.
(N.D.Ojha)*

*New Delhi
August 30, 1988”*

3. In the counter affidavit to the writ petition the Respondents admitted that directions were passed by the Supreme Court however, it was stated that out of 132 daily wagers, services of 104 were regularised according to their seniority and the remaining daily wagers' cases were under consideration for regularisation of their services. However, as far as S.K.Tripathi was concerned he was not regularised as he had been disengaged in view of the fact that he was found indulging in illegal activities of extorting extra money from truck drivers/owners while giving them gate passes in a surprise raid conducted on June 19, 1997. The counter affidavit is totally silent that how the seniority and the vacancy position were calculated pursuant to the order of the Supreme Court dated August 30, 1988.

4. In view of the fact that the learned Single Judge did not take note of the Supreme Court judgment S.K.Tripathi filed a review petition again reiterating the decision of the Supreme Court directing that the services of these 132 persons will not be terminated until their cases for regularisation were considered.

5. The learned Single Judge vide the impugned order dated November 13, 2013 again failed to notice this aspect and held that after passing of the judgment in the case of Umadevi (supra) no person who is a temporary employee or a casual employee or a daily wager can be regularised failing to note that a direction of the Supreme Court was already passed in favour of the Appellant. In the impugned order dated November 13, 2013 again there was no reference to the judgment of the Supreme Court dated August 30, 1988.

6. Considering the fact that vide the two impugned orders the learned

Single Judge failed to note the material contention of S.K.Tripathi that directions to consider his case for regularisation and not to terminate the services till then has not been considered by the learned Single Judge, the same are accordingly set aside. The writ petition be thus listed before the learned Single Judge as per the Roster Bench on August 03, 2015.

7. Appeal is disposed of.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 15, 2015
‘vn’