

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

+ **W.P.(C) No. 1941/2010**

% **20th February, 2015**

SHRI VINOD KUMAR & ORS. Petitioners
Through: Mr. Paramjeet Singh, Advocate.

versus

M/S. NETAJI SUBHASH INSTITUTE
OF TECHNOLOGY AND ANR. Respondents
Through: Ms. Avnish Ahlawat, Ms. Anchal
Chaudhary, Advocates

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. There are four petitioners in this writ petition. By this writ petition filed under Article 226 of the Constitution of India, petitioners claim that they should be regularized in their posts from the date of their original appointments on *ad hoc* basis. Since the facts with respect to the four petitioners are more or less similar, for the sake of convenience reference is made to the facts qua petitioner no. 1.

2. Petitioner no. 1 joined the services of the respondent no. 1 originally as a daily wager on 19.10.1994 in which position he worked till 26.5.1998. Petitioner no. 1 was thereafter appointed on *ad hoc* basis with respondent no. 1 as cleaner (LG) on 27.5.1998 and in which post he worked till 31.5.1999. From 1.6.1999 petitioner no. 1 was reverted to work as an unskilled labour on daily wages.

3. Petitioner no. 1, though not a party to a contempt petition, he filed an application being CM No. 5733/2004 in a CONT.CAS (C) No. 328/1998 and by which application petitioner no. 1 prayed for regularization of his services with the respondent no. 1. This application was disposed of by petitioner no. 1 being granted benefit of the judgment which was passed by a learned Single Judge of this Court in the case of *Shri Ashok Kumar Sharma and Ors. Vs. Govt. of NCT of Delhi and Ors., C.W.P. No. 3274/1996* decided on 29.4.1998. The order dated 30.4.2004 in CM 5733/2004 and the operative portion of the judgment dated 29.4.1998 in CWP 3274/1996 read as under:

“Order dated 30.4.2004 in CM No. 5733/2004

CM No. 5733/2004

Notice which is accepted by learned counsel for the petitioners. Learned counsel for the petitioners states that the

grievance of the petitioners stand readdressed in view of what has been stated in the application though there are still three persons left out who are illiterate. Learned counsel states that their cases may be considered sympathetically by the respondent for absorption in the post of Mali.

In view of the aforesaid request, it is directed that the cases of these three persons, if permissible, be considered according to the rules taking a sympathetic view of the matter.

It is further states in the application that apart from the fact that this contempt petition can be disposed of there are other writ petitions pending in which rule has been issued which are also liable to be disposed of, being WP (C) 3794/1999 titled Vinod & Ors Vs Govt. of NCT of Delhi and WP (C) 2453/2000 titled Ashok Umar & Ors. Vs. Govt. of NCT of Delhi & Ors.

Learned counsel for the petitioners in the present petition is also the counsel in WP (C) 2453/2000 and has no objection if the said writ petition is also disposed of in terms of the orders passed today in the present application.

The said statement of learned counsel for the petitioners is taken on record.

Learned counsel for the petitioner in WP (C) 3794/1999 is also present in Court and states that he would like to examine the contents of the application.

The application is accordingly allowed.

Cont. Cas (C) 328/1998

In view of the orders passed today in CM No. 5733/2004 learned counsel for the petitioner does not wish to press the contempt petition and seeks to withdraw the same.

Dismissed as withdrawn.

The matter need not to be listed on 23rd August, 2004.

Operative portion of the judgment dated 29.4.1998 in C.W.P. No. 3274/1996

7. In the facts and circumstances of the case and following the directions given by the Supreme Court in the aforesaid case I issue a direction to the respondent institute to keep the petitioners on a panel prepared on the basis of length of service and as and when vacancy arises against a regular Class IV post the petitioners would be given preference in employment to such posts provided they fulfil the eligibility criteria for such posts. While considering the cases of the petitioners for such appointment weightage of their past services shall also be given by the respondents and age bar, if any, shall not be made application to the cases of the petitioners. With the aforesaid directions and observations the writ petition stands disposed of.” (underlining added)

4. In view of the directions passed by the learned single judge of this Court on 30.4.2004 respondent no.1 appointed the petitioner no. 1 to a regular post of Attendant by the respondent no. 1's letter dated 29.6.2004. Therefore, petitioner no. 1 became a regular employee of the respondent no. 1 by being appointed to the permanent post of Attendant w.e.f 29.6.2004. Petitioner however claims that he should be treated as regularly appointed to the permanent post not from 29.6.2004 but from 27.5.1998 when he was appointed as a Cleaner on *ad hoc* basis by the respondent no. 1.

5. In view of the order of the learned single judge of this Court dated 30.4.2004 in CM No. 5733/2004 read with the operative portion of the judgment dated 29.4.1998 in C.W.P. No. 3724/1996, learned counsel for the

petitioner could not dispute that appointment to a permanent post of the petitioner no.1 with the respondent no. 1 was only as and when the vacancy arises against a regular Class-IV post in the respondent no. 1. Whenever such a vacancy arose, petitioner no. 1 was appointed and consequently petitioner no. 1 cannot seek regularization from the back date in view of the specific operative portion of the judgment dated 29.4.1998 in C.W.P. No. 3274/1996 which only talks of appointment of the petitioner no. 1 only when a vacancy arises in the regular Class-IV post. The petitioner no. 1 therefore has no case so far as his claim of retrospective appointment on the basis of the judgment dated 29.4.1998 in C.W.P. No. 3274/1996 is concerned.

6 (i). Learned counsel for the petitioners then sought to argue that petitioner no. 1 is being discriminated because other persons being Sh. Ravi Parkash, Sh. Rajender Kumar, Sh. Rohtas Kumar etc as stated in para 5 of the writ petition, were regularized from the date of their *ad hoc* appointments, and therefore, petitioner no. 1 should also be similarly treated and regularized from the date of his *ad hoc* appointment.

(ii). I cannot agree with this argument urged on behalf of the counsel for the petitioners because Article 14 of the Constitution of India is a positive concept and it cannot be invoked to enforce an illegality in view of the

judgments in the cases of *U.P. State Sugar Corpn. Ltd. & Anr. Vs. Sant Raj Singh and Ors. (2006) 9 SCC 82*, *State of Madhya Pradesh and Ors. Vs. Ramesh Chand Bajpai (2009) 13 SCC 635* and *State of Uttaranchal Vs. Alok Sharma and Ors. (2009) 7 SCC 647*. In these judgments, the Hon'ble Supreme Court has held that merely because an illegality is committed, cannot mean that another person can claim right to commit the same illegality. Courts do not grant its seal of approval by passing of judgments for giving benefit to the petitioner no.1 of an illegal act. If some persons with the respondent no. 1 have been irregularly appointed from a back date, that cannot mean that petitioner no. 1 can also claim for getting the similar benefit.

7. The present writ petition is also barred by delay and *laches* because by the writ petition the petitioner effectively seeks the setting aside of an order of the year 2004, and which granted permanence only w.e.f 29.6.2004 and which cannot be done by filing a writ petition in the year 2010. Limitation period of three years is a good guide to apply the doctrine of delay and *laches* especially because petitioner no. 1 has not shown that respondent no. 1/employer at any stage had informed that petitioner no. 1's case is being favourably considered or even considered by the respondent no. 1/employer.

8. In view of the above, there is no merit in the case of petitioners claiming regularization from retrospective dates of their original *ad hoc* appointments with the respondent no. 1.

9. Dismissed.

FEBRUARY 20, 2015
godara

VALMIKI J. MEHTA, J