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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 105/2016

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23rd November, 2016

RAJKUMAR PASWAN

..... Petitioner

Through: Mr. Ashok Kumar, Advocate.

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Mr. Manu Padalia, Advocate for
Mr. Ankur Chhibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner has filed this writ petition under Article 226 of the Constitution of India impugning the order passed by the respondent on 10.12.2015 terminating the services of the petitioner. Petitioner also seeks the relief of reinstatement of his services with the respondent along with consequential monetary benefits.

2. A reading of the writ petition shows that the petitioner was appointed as a contractual employee for a contractual period. This is also found in the

impugned order passed by the respondent on 10.12.2015. In fact, the order dated 10.12.2015 noted that petitioner was appointed to the post of Junior Engineer (Mechanical) but no such post existed. Admittedly, the petitioner was appointed for a contractual period which has ended on 31.3.2014. An ex-post facto approval to the engagement of the petitioner was granted for a limited contractual period from 2.1.2014 to 31.3.2014.

3. Once a contractual employee's contractual period comes to an end, and more so when the post itself to which the petitioner was appointed was a non-existent post, there therefore does not arise any occasion to continue such contractual appointment whose period has come to an end and, more so because even as of today there is no post of Junior Engineer (Mechanical).

4. I may note that though not so specifically prayed in the present writ petition grant of relief in this writ petition will be really for continuation of the services of the petitioner effectively as a permanent employee and which cannot be granted in view of the ratio of the judgment passed by the Constitution Bench of the Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others (2006) 4 SCC 1* which lays down the following ratios:-

“(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

(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”.

5. Since there is no sanctioned post or vacancy in such sanctioned post and there is no recruitment to the post by open competition among candidates called through advertisements, hence the petitioner cannot get appointment which will violate the ratio of *Umadevi's* case (*supra*).

6. Dismissed.

NOVEMBER 23, 2016

VALMIKI J. MEHTA, J

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