

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

+ **W.P. (C) No.6941/2000**

% **19th December, 2016**

SHRI HARISH CHANDER Petitioner

Through: None.

versus

UNION OF INDIA AND ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of regularization of his services with retrospective effect from the date of his initial appointment on 4.4.1991 with the respondent no.3/employer. Petitioner by this writ petition pleads that the petitioner was appointed to the post of Sweeper on *ad hoc* basis for a first time on 4.4.1991 for six months and thereafter he was appointed again for four months w.e.f. 9.10.1991 without the break in service. Petitioner was again reappointed for four months vide office order dated 11.2.1992 and such *ad hoc* appointments kept on continuing again and again till 25.6.1997 after which there was a break in services of the petitioner from 25.6.1997 to

28.7.1997 for a period of roughly one month. Petitioner was again appointed on *ad hoc* basis on 28.7.1997 and which continued with further *ad hoc* appointments finally till an *ad hoc* appointment was lastly given on 1.9.2000. Petitioner claims that 49 other similarly placed persons have been regularized by the respondent no.3 on 22.1.1999, and therefore, the petitioner is entitled to regularization. Petitioner also seeks benefit of scheme of regularization conveyed by the UGC vide its letter dated 22.4.1998.

2. Respondent no.3 has filed its counter affidavit and stated that the petitioner is not similarly placed with the 49 other persons who have been regularized because all such persons were appointed prior to 1990 and had continuously worked for 730 days and accordingly because of an agreement between the respondent no.3 and the labour union, such persons were regularized who had worked on consolidated basis/*ad hoc* basis for more than 730 days with the respondent no.3 till January, 1990. Admittedly, the petitioner's first appointment with the respondent no.3 was w.e.f 4.4.1991, and therefore the petitioner cannot claim equalization with the said 49 other persons.

3. Supreme Court in the judgment in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others (2006) 4 SCC 1* has laid down the following ratio:-

“(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”.

4. It is therefore seen that a person cannot be regularized in a post unless such a person makes out a case that there is a sanctioned post, there is a vacancy in such sanctioned post, the person seeking appointment is qualified as per the recruitment rules and appointment is done by following the process of calling candidates through advertisement.

5. A reading of the writ petition shows that the petitioner does not plead existence of a sanctioned post, vacancy in such sanctioned post, and that the petitioner has been appointed in the regular manner by calling for recruitment through advertisement. Petitioner therefore cannot seek regularization and which relief if granted will fall foul to the ratio of the judgment of the Supreme Court in the case of *Umadevi (supra)*.

6. So far as the claim of the petitioner for being treated equally with other 49 employees is concerned, it is seen that the petitioner cannot be treated similarly with the 49 other persons because those 49 persons were employees prior to January, 1990 and who had worked with the respondent

no. 3 for 730 days before January, 1990, and hence were entitled to be regularized in terms of the applicable scheme, and since the petitioner only got appointment after 1990 i.e for the first time on 4.4.1991 hence the petitioner cannot seek regularization as per the applicable scheme.

7. Dismissed.

DECEMBER 19,2016/Ne

VALMIKI J. MEHTA, J

