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

+ W.P.(C) 3125/2016 & CM No.13349/2016

MANOHAR & ORS

..... Petitioners

Through: Mr. Ranjeet Kumar, Advocate

versus

UNION BANK OF INDIA & ANR

..... Respondents

Through: Ms. Nidhi Bhuwania, Advocate
for R-1 & 2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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23.05.2016

1. The present petition has been filed by 15 petitioners praying *inter alia* for directions to the respondent/Union Bank of India to absorb them permanently on the post of Driver-cum-Helper in accordance with the Notification dated 31.5.2014.
2. On a perusal of the Notification dated 30.5.2014, it transpires that the respondent/Bank had issued a recruitment notice for the post of Housekeepers-cum-Peon and not for Driver-cum-Helper, as has been stated in the prayer clause of the petition. Learned counsel states that it is an error and the words "Housekeepers-cum-Peon" may be read in place of "Driver-cum-Helper" in the prayer clause. Ordered accordingly.
3. It is the contention of the learned counsel for the petitioners that each of the petitioners were employed by the respondent/Bank and are therefore

entitled to be absorbed on a permanent basis as Housekeepers-cum-Peons. However, on examining the documents filed by the petitioners along with the writ petition and collectively marked as Annexure P-2, it transpires that they were all engaged as personal drivers by individual officers of the respondent/Bank.

4. The submission made by learned counsel that the petitioners were engaged by the respondent/ Bank as Drivers-cum-Helpers is vehemently disputed by counsel for the respondents and it is submitted that they were engaged directly by the officers working with the respondent/Bank and therefore, the question of the Bank absorbing them on the subject post does not arise.

5. Counsel for the respondents submits that though the petitioners were not employed by the Bank but by officers of the staff, they were extended an age relaxation which could make them eligible for being considered for appointment to the 44 posts of Housekeepers-cum-Peon in different categories as advertised. He states that on the basis of the age relaxation given to them, the petitioners had duly participated in the recruitment process, but none of them had qualified. He submits that all the vacant posts of Housekeepers-cum-Peon as advertised have been filled up by following the prescribed procedure.

6. Having regard to the documents filed with the petition, which do not reveal that any of the petitioners were employed directly by the respondent/Bank, this Court is not inclined to entertain the present petition. Quite evidently, the petitioners were engaged as personal drivers of the officers working in the respondent/Bank and the certificates issued by the concerned officers, as enclosed with the present petition and collectively

marked as Annexure-P-2 (colly), bear out the said position.

7. Given the above position, it cannot be urged that the petitioners are eligible for permanent employment with the respondent/Bank or that the respondent/Bank is under any obligation to appoint them on permanent posts. In this context regard may be had to the law declared by the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Ors. vs. Umadevi and Ors., (2006) 4 SCC 1. In the said case, the Supreme Court had reviewed the entire case law and held that those who get employed without following a regular procedure or enter the service through the back door or daily wage or other basis, cannot claim regularization as the plea for any such relief fails when tested on the touchstone of equality of opportunity as guaranteed under Articles 14 and 16 of the Constitution of India. The Supreme Court held as under :

“43.It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right.....”

8. The Supreme Court had gone on to observe that those who get appointed on temporary or casual basis are conscious of the nature of their employment and accept such an employment with their wide open eyes. They may not be able to bargain for a better status when they are offered

such appointments but that would not be a ground to jettison the constitutional scheme of appointment and perpetuate an illegality by granting permanence to such temporary or casual employed candidates. By doing so, the Court would be creating another mode of public appointment, which is impermissible. The Court indicated the approach to be adopted in cases where temporary or *ad hoc* employees seek regularization by filing petitions in the court in the following words :

“49. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law..... When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the temporary, contractual, casual or daily wage employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.”

9. The Supreme Court had also cautioned against issuance of orders preventing regular selection or recruitment at the instance of temporarily appointed persons. It was observed that any order for continuance of such temporary or casual employees, would tend to defeat the very constitutional scheme of public employment.

10. In the light of the above pronouncement and the facts of the case, as noted above, this Court is not inclined to entertain the present petition. As noted above, the respondent/Bank did try and accommodate the petitioners by granting them some age relaxation to enable them to apply for the subject

post and they had participated in the recruitment process, but none of them could qualify. No further latitude could be given to the petitioners beyond the above. Accordingly, the writ petition is dismissed as being devoid of merits, along with the pending application.

MAY 23, 2016
sk/ap

HIMA KOHLI, J

