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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No. 7898/2016

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22nd November, 2016

Mr. PXXX

..... Petitioner

Through: Ms. Sija Nair Pal, Adv.

versus

MINISTRY OF HEALTH AND FAMILY WELFARE & ORS.

..... Respondents

Through: Mr. Rajesh Kumar and Ms.
Santwana, Advs. for R-1.
Mr. Peeyosh Kalra, ASC for GNCTD
for R-2,3 & 4.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Petitioner by way of this writ petition filed under Article 226 of the Constitution of India seeks the relief of direction to the respondent nos. 7 and 8 to reinstate the petitioner in his employment. Petitioner also claims consequential relief of payment of back wages. Petitioner also claims compensation of Rs.10 lacs for the trauma and pain caused by the undignified treatment and violation of fundamental rights of the petitioner by the respondent nos. 7 and 8. Petitioner pleads that he became an HIV

patient on account of needle pricks received during the course of work with respondent no.8 and to which respondent no.8, the respondent no.7/agency supplied personnel such as the petitioner.

2. The present case is a hard case but this Court has to act only in accordance with law even assuming that the petitioner is an employee of respondent no.8/Vallabhbhai Patel Chest Institute a State instrumentality, the law being the law laid down by the Constitution Bench Judgment 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”.

3. Actually and in reality the petitioner is not an employee of respondent no.8/Vallabhbhai Patel Chest Institute which is an instrumentality of State, because, the petitioner was employed by a private employer/respondent no.7/M/s B.K.Enterprises and which respondent no.7 is an agency which supplies personnel to the respondent no.8. Petitioner therefore would be an employee of respondent no.7 a private organization and not respondent no.8. Private services and termination thereof cannot be the subject matter of a writ petition under Article 226 of the Constitution of India.

4. In any case, the petitioner cannot be regularized by the respondent no.8 inasmuch because even assuming that the petitioner was employed by respondent no.8, respondent no.8 for regularizing the services of the petitioner necessarily had to act in accordance with the ratio of *Umadevi's case (supra)* which required existence of a sanctioned post, vacancy in such sanctioned post, petitioner being duly qualified as per the eligibility criteria of the post in question and that the recruitment of the petitioner took place to the post in question by means of calling candidates by advertisements in newspaper and/or through the employment exchange. None of these four essential ingredients exist in the facts of the present case, and therefore the petitioner could not have been legally employed by the respondent no.8/Vallabhbhai Patel Chest Institute, and hence the petitioner's services therefore cannot be regularized with respondent no.8. This is all the more so because the petitioner is not the employee of respondent no.8 but is/ an only an employee of a private employer i.e respondent no.7.

5. So far as grant of damages is concerned, decision on this issue involves various disputed questions of facts as per the allegations made by the petitioner which require trial and therefore this writ petition is not an appropriate process for seeking the relief of damages.

6. Dismissed.

NOVEMBER 22, 2016 / ib

VALMIKI J. MEHTA, J