

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

+ **W.P.(C) No.5658/2003**

% **20th March, 2017**

UDAY VIR Petitioner

Through: None.

versus

SECRETARY, DELHI JAL BOARD 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. Petitioner by this writ petition under Article 226 of the Constitution of India, seeks the relief of being appointed to the post of Sever Cleaning Machine Driver and also thereafter for regularization of his services from a backdate.

2. Petitioner in the present case was employed by the respondent/employer/Delhi Jal Board as a Sever Cleaning Machine Driver on Muster Roll basis with effect from August, 1999. After three years of service of the petitioner as a Sever Cleaning Machine Driver petitioner was again appointed on casual basis to a lower post of Beldar. Petitioner, therefore, seeks appointment to the earlier post of

Sever Cleaning Machine Driver and also for regularization of his services on the ground of having worked from the year 1999.

3. Petitioner cannot be regularized in view of the ratio of the judgment of the Supreme Court in the case of *Secretary, State of Karnataka and Others vs. Umadevi (3) and Others, (2006) 4 SCC 1* and which lays 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 calling all possible persons and which process involves inter-se competition among the candidates

(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. Since there is no averment with respect to existence of sanctioned post, and that there was a vacancy in that sanctioned post, petitioner hence cannot claim regularization of services or appointment in regular manner to the post of Sever Cleaning Machine Driver.

5. Dismissed.

MARCH 20, 2017

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VALMIKI J. MEHTA, J