

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No. 1742/2010

%

16th January, 2017

MR. SISUPALAN AND ANR.

..... Petitioners

Through: Mr. Sukhvinder Singh, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Prasanta Verma, standing
counsel for R-1.

Mr. Ravinder Aggarwal, Adv. for R-
2/UGC.

Mr. Aditya Ranjan, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

**CM No. 19916/2016 (for restoration) and CM No. 19917/2016 (for
condonation of delay of 1306 days in filing the restoration application)**

Though there is a huge delay of 1306 days in filing these applications for restoration and condonation of delay, and though there is no ground for restoration, but since I have heard arguments on merits, these applications are allowed and the writ petition is restored to its original number.

The applications stand disposed of.

W.P.(C) No. 1742/2010

1. By this writ petition under Article 226 of the Constitution of India, petitioners seek the relief of their being regularized in the services of Inter University Accelerator Centre, originally called Nuclear Science Centre. Petitioners claim that they were appointed as Receptionists in the Guest House-cum-Hostel of Nuclear Science Centre.

2. A reading of the writ petition shows that petitioners were never the employees of Nuclear Science Centre but were employees of contractors to whom jobs were outsourced by the Nuclear Science Centre. This becomes clear and is found to be admitted by the petitioners themselves from paras 3.2 and 3.3 of the writ petition and which paras read as under:-

“3.2 That the petitioners were appointed alongwith others by the Management of Nuclear Science Centre itself but after appointment were placed under the contractors appointed from time to time.

3.3 That the petitioners continued to work on interruptedly for No. of years as the work performed by them was of permanent and perennial nature. The respondents placed the petitioners under various contractors some of them not even registered under the Contract Labour (Abolition & Regularisation) Act 1970. For example a contractor B.K.Suddan, under whom the services of the petitioners were placed was not even registered. Another contractor Help line Hospitality was introduced in 1998 and the services of the petitioners were placed under it. This was also not a registered contractor and the same was only introduced for the purpose of disbursing the salary to the petitioners and other similarly situated employees.”

3. No document whatsoever has been filed by the petitioners to show that they were employees of the Nuclear Science Centre/respondent

no.3, and therefore, since petitioners were only employees of private contractors, this writ petition will not lie in this Court because petitioners were employees of private contractors and at no point of time petitioners were direct employees of Nuclear Science Centre/respondent no.3.

4. I have gone through various other pleadings in the writ petition which show that certain earlier writ petitions were filed by the petitioners and in such writ petitions this Court passed certain orders, however, those writ petitions were filed and orders passed on account of the Contract Labour (Regulation and Abolition) Act, 1970. In none of these earlier writ petitions any orders have been passed, which hold that the petitioners were not the employees of private contractors, but were employees of Nuclear Science Centre/respondent no.3.

5. Besides the above reason for dismissing of the writ petition as petitioners were never the employees of Nuclear Science Centre/respondent no.3 but were only the employees of private contractors and hence the writ petition is not maintainable against Nuclear Science Centre/respondent no.3, even if the writ petition was filed against Nuclear Science Centre/respondent no.3 for regularization of petitioners and taking hypothetically employees of Nuclear Science Centre/respondent no.3, the services of the petitioners cannot be regularized in view of the ratio of the

Constitution Bench judgment of the Supreme Court in the case of *Secretary, State of Karnataka & Others vs. Umadevi (3) & Others, (2006) 4 SCC 1*,

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”.

6. There are no averments in the writ petition that petitioners were appointed by selection through advertisement for the post of Receptionists in question, that there were such sanctioned posts with the Nuclear Science Centre/respondent no.3 and that there were vacancies in such sanctioned posts and that how the petitioners satisfied the eligibility criteria for being appointed as Receptionists with the Nuclear Science Centre/respondent no.3. Therefore, even if petitioners were employees of Nuclear Science Centre/respondent no.3, petitioners cannot be regularized in their services as claimed by them in view of the ratio of the Constitution Bench judgment of the Supreme Court in the case of *Umadevi (supra)*.

7. Dismissed.

JANUARY 16, 2017/ ib

VALMIKI J. MEHTA, J