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

+ **W.P.(C) 6659/2017**

VEENA BHARADWAJ AND ORS Petitioners
Through: Mr. O.P. Aggarwal, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr. Vivek Goyal, CGSC with
Ms. Lalita, Asst. Law Officer, NCW
for R1 to R3.
Mr. Sanjoy Ghose, ASC with
Mr. Rhishabh Jetley, Adv. for
respondent / GNCTD.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **25.08.2017**

W.P.(C) 6659/2017

The present petition has been filed by the petitioners with the following prayers:-

“It is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to: -

- a) issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent to cancel the impugned order dated 25.07.2017 and the petitioners should be considered to be continued in the department without any break;*
- b) issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent to initiate the process in pursuance of new RRs of 2014 and consider the petitioners for regularising*

it the department NCW with retrospective effect.

- c) issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent to release all the consequential benefits including financial implications and promotions etc. as being accrued to the petitioners during their respective tenure of service;*
- d) cost of the petition may also be awarded in favour of the petitioners and against the respondents;*
- e) Pass order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case”*

Mr. O.P. Aggarwal, learned counsel appearing for the petitioners concedes that the petitioners had earlier filed writ petitions being W.P.(C) nos. 6281/1998, 6386/1998, 6429/1998 and 6640/1998. The said writ petitions were decided on 5th October, 2013. The claim in the said writ petitions, as noted from the judgment at Page 174 of the paper book, was for regularization of their services. This Court vide a detailed order dismissed the writ petitions. The operative Para of the same reads as under:

“4. The writ petition does not show that any of the mandatory requirements exist as stated by the Constitution Bench in the case of Umadevi (supra) viz of there being sanctioned posts, there being vacancies in such sanctioned posts to which petitioners were appointed and that petitioners were appointed after selection through advertisement in newspaper and/or through the employment exchange. Supreme Court in the judgment in the case of Umadevi (supra) has categorically observed that there cannot be regularization of such casual labourers. In the case of Umadevi (supra) the Supreme

Court has also held that there cannot be directions to create/sanction posts as the financial aspects are best left to the government to decide.”

Mr. Vivek Goyal, learned CGSC appearing for the respondent nos. 1 to 3 states that the present petition has been filed by the petitioners in the said writ petitions, and as such is hit by principles of *res judicata*.

Mr. Aggarwal states that the present petition has been filed on the premise that the respondents have sent and got approved the Recruitment Rules (at Page 92 of the paper book) which would entitle them regularisation. This aspect was noted in the order dated 24th August, 2017 of this Court. Mr. Goyal has denied the submission made by Mr. Aggarwal by contending that the Rules have not been approved by DOP&T. He has drawn my attention to page 91 of the paper book to contend that in the communication dated 23rd May, 2014 to the Member Secretary, National Commission for Women, where the petitioners are working, Ministry of Child Development had enclosed the comments of DOP&T. He states that these are the same comments which were placed in this Court in the hearing dated 24th August, 2017 by Mr. Aggarwal. Mr. Goyal has drawn my attention to Paras 4 and 5 of the comments which reads as under:

“4. The draft RRs have, however, been examined and it is noted that in respect of Junior Accountant, LDC, Hindi Typist,

Staff Car Drivers and Peon, the Ministry of Women & Child Development has proposed the method of recruitment by regularising by absorption of present contractual / daily wage employees. For they have sought one time relaxation from DoPT in the upper age limit for absorption of employees who have been engaged as daily wagers / temporary status and on contract from 1992 to 2001.

5. In this context it is stated that as per the NCW's Regulations dated 9.1.1997 the method of recruitment to the posts of LDC is by Transfer on Deputation from officials working in Central Secretariat and in respect of the posts of Staff Car Drivers and Peon is "By transfer on Deputation" from amongst officials of the corresponding grades in Central Government. But from the proposal of M/o WCD it appears that the appointments to the above said posts have been made by appointment of daily wagers and contractual employees which itself is not in order. Therefore the question of regularising these daily wagers and contractual workers would not arise. Further, as far as the question of fixation in the upper age limit is concerned, as a policy, relaxation in age limit beyond the provisions prescribed in the RRs is not agreed by DoPT."

The aforesaid comments of the DOP&T are very clear inasmuch they have not agreed to the method of recruitment of the LDCs. They have also stated that the question of regularization of the daily wagers and contractual clerks would not arise. Be that as it may, in view of the fact, this Court had rejected a similar claim of the petitioners for regularization, this petition shall be hit by principles of *res judicata*.

The present petition being not maintainable is dismissed.

CM. No. 27687/2017

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 25, 2017/ljg