

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

% **Date of decision: 06.12.2019**

+ **W.P.(C) 2576/2017 & CM APPL. 11122/2017**

ASHA KUMARI

..... Petitioner

Through: Mr. R.K. Kapoor, Ms. Shweta Kapoor
and Ms. Priya Pande, Advocates

versus

TECHNOLOGY INFORMATION FORECASTING AND
ASSESSMENT COUNCIL (TIFAC) & ANR

..... Respondent

Through: Mr. Sarfaraz Ahmad, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

A.K. CHAWLA, J. (ORAL)

By the instant petition, the petitioner, in effect, seeks issuance of a writ of Mandamus for being regularized to the post of Hindi typist with the respondent-Technology Information Forecasting And Assessment Council in short, 'TIFAC'.

2. The facts emerging from the record are that the committee of Parliament on Official Language recommended 27 items of work to be done in Hindi by TIFAC. At that point of time, there was no Hindi typist in TIFAC. It resulted into TIFAC undertaking a process for selection for the

post of Hindi typist. In pursuance thereof, the petitioner came to be engaged as Hindi typist w.e.f. 18.05.2006. For the purpose, she was issued communication F No. 13/16/2006/Admn-Tifac, copy whereof, forms part of the petition, as Annexure P-1. Her such initial employment was on contract basis for a period of 89 days from the date of joining on a consolidated pay of Rs.5000/- per month. Her appointment was however extended from time to time without any break in service. Last of such extension was vide office order F. No. TF/02/007/2008-Estt. Vol-II dated 24.10.2016 till 31.03.2017 with TIFAC. Before the expiry of such term, when the petitioner had put in more than 10 years, apprehending non-extension of her service, she has approached this Court by the instant petition.

3. TIFAC opposes the grant of any relief to the petitioner, primarily, on two counts. Firstly, the recommendation made by it to the Central Government, which has administrative control over it, was not acceded to. The other pertinent plea is that the work related to the subject post was neither inherent to the functioning of TIFAC nor was such that its dispensation would create any impediment in the smooth functioning of TIFAC inasmuch as much of TIFAC staff was now trained in Hindi typing and was doing the job of Hindi typist.

4. Mr. Kapoor, learned counsel for the petitioner adverting to the ratio of the judgments of the Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.* AIR 2006 SC 1806 and *Nihal Singh and Others v. State of Punjab and Others* (2013) 14 SCC 65, strenuously contends that the petitioner having worked for over ten years, it was a fit case, where, the petitioner should have been considered for being regularized to the subject

post. More so, in his submissions, the work being performed by the petitioner was of a perennial nature and therefore, the subject post could not be dispensed with on the purported temporary arrangements, on which, TIFAC seeks to oppose the prayer.

5. Mr. Ahmad, learned counsel for the respondent, on his part, placing reliance upon ***Kumar mayank And Ors. v. Delhi Technological University & Anr.*** 2016 X AD (DELHI) 547 and ***Saiyed Zegham Murtaza v. Rajya Sabha Secretariat*** 2018 SCC OnLine Del 11268, contends that the petitioner is not entitled to issuance of any Mandamus. In his submissions, the appointment of the petitioner was temporary-being contractual, and, the mere passage of time does not invest any legal right in her to seek regularization to the post, and, for that purpose, creation of post as per the ratio of judgment in ***Nihal Singh's*** case (supra), would be unwarranted. In his submission, the petitioner does not fulfill any of the four ingredients taken note of the learned Single Judge in ***Kumar Mayank's*** case (supra) viz. existing sanctioned posts; the vacancies existing in such sanctioned posts; eligibility criteria being fulfilled by the candidates as specified in the recruitment rules; and, the competition between candidates on the posts advertised to fill such vacancies. In his submissions therefore, the petitioner was not entitled to any relief.

6. Undisputedly, the petitioner was appointed to the post of Hindi typist vide communication dated 18.05.2019. Relevant to the context, it reads, as under:-

“Kindly refer to your application and subsequent interview you had with the Board of

Selection on 8th May 2006. On the basis of recommendations of the Search-cum-Selection Committee, you have been found suitable for the post of Hindi Typist. The post is on contract basis for a period of Eighty Nine days from the date of joining with a consolidated pay of Rs.5000/- per month. You are not entitled for any other allowances during your contract period.

7. The foregoing communication leaves no doubt that the petitioner was appointed to the post of Hindi typist, though, on contractual basis. It does suggest that to give effect to the mandate or the recommendations of the committee on Parliament on official language, the post of Hindi typist was required to be created and filled by TIFAC. Then, it also emerges from the record that TIFAC on its part had even made a recommendation for the purpose, when one adverts to its communication No. TIFAC/Hindi/7/2006 dated 07.06.2006, which forms part of the paper book, as Annexure PR-I. In the given context, it would be apposite to advert to the relevant extracts thereof, which are, as under:-

*During the course of inspection of TIFAC by Committee of Parliament on Official Languages regarding use of Hindi on 21.01.2006, the Committee has recommended 27 items of work to be done by TIFAC. **The implementation of Official Language Policy is a continue activity and a Hindi Cell is to be set-up for this purpose.** Accordingly, a list of items of work to be carried out by the proposed Hindi Cell has been prepared and is as under:*

Items of work to be carried out by the proposed Hindi Cell

Translation

- *The translation from English to Hindi and vice-versa of General Orders and other documents as mentioned in Section 3 (3) of O.L. Act, required to be issued by various Divisions/Sections.*
- *The translation, vetting and printing (including proof reading) of Annual Report and other brochures.*
- *To ensure that all codes, rules, manuals, forms used in TIFAC, are available in both Hindi and English.*

Training in Hindi, Hindi Typewriting and Hindi Stenography.

- *To ensure that adequate number of employees are nominated for training in Hindi, Hindi Typewriting and Hindi Stenography.*
- *To help the staff in the use of Hindi in their official work and to remove their difficulties. For this purpose, Hindi workshops will have to be organized for the Officers and Staff, who have acquired working knowledge in Hindi.*
- *To prepare and submit Half yearly return regarding training in Hindi, Hindi Typewriting and Stenography to Deptt. of Official Language.*

Implementation

- *To acquaint the Officers and staff of TIFAC with the provisions of the O.L. Act, Government rules and orders relating to Official language and Hindi Training and to help them in implementing the same.*
- *To ensure proper compliance of the provisions of the Official Language Act and the orders*

pertaining to Hindi Teaching Scheme and Official Language policy.

- *To organize OLIC meetings from time to time, and to prepare the Agenda and minutes of the meetings and to coordinate the action taken on the decisions taken in the meetings.*
- *To make suggestions from time to time for promoting the progressive use of Hindi and to keep liaison with the Deptt. of Official Language and Deptt. of Science & Technology in this regard through proper channel.*
- *To compile and prepare quarterly progress report regarding progressive use of Hindi for submission to Deptt. of Science and Technology and to Deptt. of Official Language.*

Arrangement for reference literature and books in Hindi.

- *To assist library committee for selection and purchase of Hindi books.*
- *To procure standard dictionaries of Hindi English and English-Hindi glossaries and allied literature for the libraries and the same should be made available to the employees for appropriate use.*

Organization of Hindi day/week/fortnight.

- *To organize Hindi day on 14th September or Hindi Week/Hindi fortnight beginning from that day.*
- *To organize various Hindi competitions viz. (1) Notings and drafting (2) Essay writing (3) Translation (4) Poetry recitation (5) Hindi typewriting (6) Maximum use of Hindi in official work etc. for officers and staff.*
- *To issue Certificates to the participants in various competitions and to award prizes.*

Organisation of Hindi workshops

- To organize Hindi workshops for the officers/employees in order to remove their hesitation to work in Hindi.

Norms for creation of minimum number of Hindi posts

The following norms/guidelines have been prescribed by Department of Official Language vide their O.M. No. 13035/3/95-OL(P&C) dated 22 July 2004 for creation of minimum number of Hindi posts for the implementation of Official Language policy in respect of attached and subordinate offices etc:

- (1) *One Hindi Officer (Assistant Director, OL) in each attached/subordinate office having 100 or more ministerial employees*
- (2) *One Junior Translator in an office having 25 to 125 ministerial employees; two Junior Translators for 126 or more ministerial employees.*
- (3) *A post of Hindi Typist in respect of those offices of Central Government, which have at least 25 ministerial employees.*

(The term Ministerial Employees used above includes all those employees and officers, who have been sanctioned for ministerial duties, irrespective of the fact that they are technical or scientific employees or officers. Further, in case the technical and scientific posts are sanctioned for such work by the incumbents have been entrusted with ministerial work also, they may be taken into account for computing Hindi posts.)

Minimum number of Hindi Staff admissible

TIFAC has got the 118 Officers and employees, which included the staff working on contract basis and posted in missions (i.e NMBA, FAUP etc.). On the basis of this staff strength, the following minimum number of staff are admissible:

- 1. Asstt. Director (OL)/Hindi Officer in the scale of pay of Rs 6500-200-10500.*
- 2. Junior Hindi Translator in the scale of pay of Rs 5000-150-8000.*
- 3. LDC/Hindi Typist in the scale of pay of Rs 3050-75-3950-80-4590.*

Approval requested:

The following posts have been considered absolute minimum and necessary for smooth implementation of Official Language Policy and other constitutional provisions of Official Language Act, Official Language Rules and orders issued by Deptt. of Official Language::

- 1. Hindi Officer in the scale of pay of Rs 6500-200-10500.*
- 2. Hindi Typist/LDC in the scale of pay of Rs 3050-75-3950-80-4590.*

(The incumbent appointed to this post shall have the knowledge of Hindi/English typing.).

Department of Science and Technology may kindly see and consider the above proposal and convey the necessary approval for creation of the above posts in TIFAC.

8. A bare perusal of the foregoing recommendation made by TIFAC itself, leaves no doubt that to achieve the objectives and to duly implement the official language policy, it required to even set up a Hindi Cell. It also makes clear that to achieve the given objectives, the mere knowledge and the efficiency to type in Hindi would not suffice. There is thus no merit in

the plea now sought to be raised by TIFAC after more than ten years of the appointment of the petitioner to the post of Hindi typist that some of its staff is able to undertake the task of typing work in Hindi generated by its officers and other staff. It is also not the case of TIFAC that it does not intend to create any Hindi Cell, for which, it sought approval of the competent authority vide its communication dated 07.06.2006. Therefore, any contention raised to the contrary on behalf of TIFAC, is wholly unmerited.

9. As regards the plea raised by Mr. Ahmad, learned counsel for TIFAC, placing reliance upon the observations made by the learned Single Judge in ***Kumar Mayank's*** case (supra) that no appointment can be made on regular/permanent basis unless the four criteria/ingredients viz. existing sanctioned posts; the vacancies existing in such sanctioned posts; eligibility criteria being fulfilled by the candidates as specified in the recruitment rules; and, the competition between candidates on the posts advertised to fill such vacancies, it is equally misplaced. The principle of law elucidated by the learned Singh Judge ***Kumar Mayank's*** case (supra) and the ratio of the judgment of the Supreme Court in ***Umadevi's*** case (supra) are not in conflict with each other. What the learned Single Judge observed in ***Kumar Mayank's*** case (supra) are the fundamental principles to be taken note of while considering appointment to a post on a regular or permanent basis. To it, there cannot be any dispute. The observations made by the learned Single Judge cannot be read out of context. It is to be understood that the case of the petitioner is founded on the principles and the factors to be taken into consideration to form an opinion and take a policy decision for giving regular employment to an employee, who has rendered uninterrupted service

for over ten years, having been appointed on casual or temporary basis applying the ratio of *Umadevi's* case (supra). In sequel thereof, as pointed out Mr. Kapoor, creation of the post, if, the need be, taking note of the ratio of the judgment of the Supreme Court in *Nihal Singh's* case (supra).

10. In *Umadevi's* case, the Supreme Court observed as follows:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should

be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

11. In ***Nihal Singh's*** case (supra), the Supreme Court observed as follows:

"35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is

always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks."

12. Taking note of the ratio of the judgments of the Supreme Court in *Umadevi's* case and *Nihal Singh's* case (supra) when, the Court adverts to the case of the petitioner, it appears, the case of the petitioner falls within the parameters for consideration of regularization of the petitioner to the post of Hindi typist and, possibly, creation of such post, if not a Hindi Cell, for which, TIFAC had taken up the subject with Central Government vide its communication dated 07.06.2006.

13. For the foregoing reasons, the writ petition is disposed of with a direction to TIFAC-the respondents to take a decision on the aspect of regularization of the petitioner to the post of Hindi typist within a period of 12 (twelve) weeks from today. The decision so taken shall be communicated to the petitioner within two weeks thereof through e-mail in addition to the usual process. In the event, the petitioner does not maintain any e-mail address, the petitioner shall create so and provide it to TIFAC within a week from today. It is further directed that, in the event of a decision taken by TIFAC, which is adverse to the interest of the petitioner, TIFAC shall not initiate any action thereon for a period of two weeks of communication of such decision to the petitioner.

14. Writ petition stands disposed of in the foregoing terms. Pending application also stands disposed of. No order as to costs.

A. K. CHAWLA, J

DECEMBER 06, 2019

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