

\$~21

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

+ **Date of Decision: 27.09.2021**

% **LPA 339/ 2021**

YASHIKA ARORA

.....Appellant

Through: Mr. Vinay Kr. Garg, Senior Advocate
along with Mr. Sagar Saxena, Mr. Parv Garg, Mr.
Parmeet Singh and Mr. Karandeep Rekhi,
Advocates.

versus

GOVT. OF NCT DELHI & ORS.

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Mrs. Tania Ahlawat, Mr.
Nitesh Kumar Singh and Ms. Palak Rohmetra,
Advocates for Respondent DSJ.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

CM APPL. 32886/2021(Exemptions)

Allowed, subject to all just exceptions.

The application stands disposed of.

LPA 339/ 2021& CM APPL. 32866/2021

1. This Appeal has been filed by the Appellant being aggrieved by the judgment dated 15.07.2021 whereby the learned Single Judge of this Court dismissed WP(C) 6519/ 2021 titled as “*Yashika Arora vs. Govt. of NCT*”

LPA 339/ 2021

Page 1 of 15

Delhi & Anr.”

2. The above writ petition was filed by the Appellant seeking quashing of the order dated 26.06.2021, whereby services of the Appellant as Data Entry Operator (DEO) were terminated. In addition, the Appellant also prayed for quashing of the order dated 30.06.2021, whereby the Principal & District Sessions Judge (Central) Tis Hazari Court, concurred with the reasoned recommendation of the Committee which rejected the representations of the Appellant for regularization of her services to the post of DEO. The Appellant further prayed for regularization of her services as a Data Entry Operator.

3. It is the case of the Appellant that the Appellant was offered appointment to the post of Data Entry Operator (DEO) Grade ‘A’, purely on ad hoc basis in the pay scale of Rs. 4000-6000/- vide offer of appointment dated 26.04.2008.

4. The Appellant was posted in Accounts Branch, Tis Hazari Courts, Delhi. On the same day, the Appellant joined her services. As per the Appellant, the offer of appointment nowhere mentioned the period for which the Appellant was appointed. It merely stated that the Appellant is being appointed purely on an ad hoc basis.

5. Subsequently, vide corrigendum dated 06.11.2008, the Respondents - in modification of the appointment letter dated 26.04.2008, ordered that the appointment of the Appellant will be valid for a period of one year from the date of appointment, purely on ad hoc basis until further orders.

6. On 08.05.2009, the Respondent addressed a letter to the Appellant seeking her willingness to continue to work on the post of Data Entry Operator, Grade 'A' for another period of one year.

7. The Appellant agreed to continue to work, and vide letter dated 11.05.2009, the Respondents extended her services for another year. The Appellant was granted annual increments as well as pay revision as per 6th CPC recommendations. The Appellant, time and time again, received various offers from the respondent to extend her services for periods varying from a few months, to a whole year.

8. In 2012, new Rules were issued by the Respondents for filling up the post of Data Entry Operator, Grade 'A'. As per the Appellant, the Appellant fulfilled all these criteria and is fully qualified and eligible to be appointed as Data Entry Operator, Grade 'A' on regular basis.

9. The Respondent, Government of NCT Delhi, came out with an office order dated 19.10.2015, in line with the judgment of Supreme Court in *Secretary State of Karnataka & Ors. v/s Uma Devi & Ors.*, 2006 4 SCC 1, wherein the Respondent has approved a general policy of regularization of contractual employees, which reads as under: -

**“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI
(SERVICES DEPARTMENT – BRANCH - IV)
7TH LEVEL, B-WING, DELHI SECRETARIAT,
I.P. ESTATE, NEW DELHI- 110002**

No.F.19(11)/2015/S.IV/1890-96

Dated: 19/10/2015

LPA 339/ 2021

Page 3 of 15

ORDER

The Government of National Capital Territory of Delhi has considered the issue of regularization of the Contractual employees working in various departments of Govt. of N.C.T. of Delhi and approved the following general policy for regularization of the contractual employees vide Cabinet Decision No.2223 dated 06.10.2015:-

In line with the Uma Devi judgment, Government of National Capital Territory of Delhi makes the following policy for contractual employees working against regular posts:-

- 1. Every department should formulate a scheme to fill up all vacant posts.*
- 2. Contractual employees working against these posts should be allowed to apply with following conditions:-*
 - (a) They should be given age relaxation.*
 - (b) They should be given appropriate and adequate weightage of experience for that post in evaluation.*
 - (c) Any contractual employee, whose service was terminated due to unsatisfactory work during their contractual employment, shall be treated as ineligible, under the scheme.*
- 3. Policy in para-2 shall also be applicable to the contractual employees who have worked against these posts for an aggregate period of 6 months or more after 01.04.2013.*

It is, therefore, requested that the necessary action with regard to implementation of above decisions may be initiated at the earliest.

*(ANUPMA CHAKRAVORTY)
DY. SECRETARY (SERVICES)*

No.F.19 (11)/2015/S.IV/1890-96

Dated: 19/10/2015

Copy forwarded for information and necessary action to:-

- 1. Secretary to Lt. Governor, Govt. of N.C.T. of Delhi.*
- 2. Pr. Secretary to Chief Minister, Govt. of N.C.T. of Delhi.*
- 3. Secretary to Dy. Chief Minister, Govt. of N.C.T. of Delhi.*
- 4. Secretaries to all Ministers, Govt. of N.C.T. of Delhi.*
- 5. OSD to Chief Secretary, Govt. of N.C.T. of Delhi.*
- 6. Pr. Secretaries/ Secretaries/ Head of Departments, Govt. of N.C.T. of Delhi/ New Delhi.*
- 7. Guard File/ Delhi Govt. website.*

*(ANUPMA CHAKRAVORTY)
DY. SECRETARY (SERVICES) ”*

10. In 2018, the Appellant filed a writ petition bearing number WP(C) 7407/2018 before this Court, with a prayer to treat her as a regular incumbent at the post of Data Entry Operator, Grade ‘A’, and also prohibit the Respondents from discontinuing her services.

11. The said writ petition was disposed of on 20.07.2018 with directions to the Respondents to consider the writ petition as a representation towards regularization of the services of the Appellant. The Appellant also made separate representation dated 26.07.2018, wherein the Appellant again requested for regularization of her services. In the meantime, the respondent issued an advertisement dated 20.09.2019 inviting applications for filling up of various posts including that of DEO Grade “A” in the Office of District & Sessions Judge (HQs), Delhi (12 posts), and in the office of Principal Judge, Family Courts (HQs), Delhi (2 posts). Admittedly, the Appellant did not apply against the said advertisement. She claims that this was on account of her ineligibility to participate, since she was overage.

12. On receipt of the Appellant's representation, a Committee was constituted to consider the Appellant for regularization. The Committee, namely, Administrative and Legal Affairs Advisory Committee, in its meeting dated 09.06.2021, relied on the judgment of *Uma Devi* (supra), and also noted that the appellant is an ad-hoc employee and can be terminated without giving reasons, and also the fact that the Appellant did not exercise her option for participation in the selection process for the post of DEO, vide advertisement dated 14.09.2019. The committee thereby rejected the representation and further directed termination of the Appellant with immediate effect.

13. The Principal District and Sessions Judge vide order dated 30.06.2021, examined the report of the Committee and agreed with the findings of the Committee. The challenge to the said order was rejected by the learned Single Judge of this Court on 15.07.2021. The present appeal has been preferred against the impugned order and judgment dated 15.07.2021.

14. Mr. V.K. Garg, learned Senior Counsel appearing for the Appellant, has made the following submissions: -

- (i) The Appellant has not been granted the benefit of regularization based on the report of the Administrative and Legal Affairs Advisory Committee. The said report of the Committee has neither been shared nor filed by the Respondent, and hence the Appellant is unaware of the contents and unable to challenge its findings;

- (ii) The Appellant could not have applied pursuant to the advertisement dated 14.09.2019 as the Appellant was over-age on the said date, and nowhere did Clause 4 of the advertisement indicated any provision for age relaxation of candidates.
- (iii) The Supreme Court in *State of Karnataka Vs. M.L. Kesari*, (2010) 9 SCC 247 carved out an exception from *Uma Devi* (supra) as far as regularization of irregular appointments are concerned. The Ld. Senior Counsel for the appellant submits that the benefit of this exception should be extended to the present Appellant as well, since her appointment was an irregular appointment and not an illegal appointment, and thereby she is eligible for regularization of her services.

15. We have heard the learned Senior counsel for the Appellant, as well as the learned counsel for the Respondent. We have gone through the impugned judgment as well as the judgments relied upon by the learned Senior Counsel for the Appellant. We are unable to agree with the submissions put forth by the learned counsel for the Appellant.

16. It is an admitted case and has also been noticed by the learned Single Judge, that the Appellant was appointed without there being any advertisement for filling up the post of DEO. There was no advertisement issued for filling up of vacancies for post of DEO, there was no interview held, there was no pool out of which the Appellant was selected. The appointment of the Appellant was a back door entry. There was no public advertisement; no public process of selection; no competition, and; no

transparency in the petitioner's recruitment process. The terms of appointment issued to the Appellant clearly stated the appointment to be on an ad hoc basis. Thus, the Petitioner knew, at all times, that she has no vested right to claim any lien over any post. She joined the post on ad hoc basis with open eyes knowing that she could be terminated at any time.

17. The appointment of the Appellant continued to be ad hoc from time to time, till she was terminated. At no point in time did the Appellant contest her nature of appointment.

18. The Appellant does not have any vested right to the post of Data Entry Operator. The very fact that the Appellant has completed 13 years in service, does not give her the right to be regularized.

19. The judgment of the Constitution Bench in *Uma Devi* (supra), is absolutely clear when it states:

*"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 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 the courts or of tribunals. The question of regularisation 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 regularise 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 the 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 regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

(emphasis supplied)

20. As per *Uma Devi (supra)*, a scheme for regularization within 6 months was directed to be framed, only as a one-time measure, for the services of such irregularly appointed persons, who had already worked for 10 years or more in a duly sanctioned post (but not under cover of orders of Court and Tribunals) when *Uma Devi (supra)* was decided.

21. The Judgment of *Uma Devi (supra)* was pronounced way back as 10.04.2006, and the ad hoc irregular appointment of the Appellant took place on 26.04.2008 i.e. nearly two years later. The purport of the judgment in *Uma Devi (supra)* was certainly not to permit continuation of the practice of making irregular appointments even after the said judgment was tendered, and to provide a window to such subsequent appointees to seek regularization after continuing for 10 years irregularly in ad hoc capacity. That is why the judgment very clearly takes about only a one time exercise of regularization by framing a scheme within 6 months of the judgment. Thus, the one-time measure for regularizing ad hoc employees envisaged by *Uma Devi (supra)* cannot be pressed into service today.

22. The judgment of *State of Karnataka v. M.L. Kesari*, (2010) 9 SCC 247, nowhere strikes a different note from *Uma Devi* (Supra). The Supreme Court *M.L. Kesari* (supra) has held the below:

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Uma devi (3) [(2006) 4SCC 1], if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

23. In fact, in the judgment of *M.L. Kesari* (supra), the appeals were pending for more than 4 years, and the Appellant had not considered the cases of the Respondent for regularization within 6 months as per the decision of *Uma Devi* (supra). Hence, it was directed that the Zila Panchayat was to comply with Paragraph 53 of *Uma Devi* (supra) judgment.

24. As regards point 4 of the advertisement dated 14.09.2019 is concerned, it will be relevant to reproduce the same which reads as under:-

“04. Age limit relaxable by 5 years in case of SC/ST, 3 year in case of OBC, 10 years in case of persons with disabilities and in case of Ex-serviceman/ Serving Government employees as per rules (Please refer to Common Instructions for more information).”

25. It is an admitted case that the order dated 19.10.2015 is duly applicable to the Respondents and the Appellant. Clause 2 (a) of the order reads as under: -

“2. Contractual employees working against these posts should be allowed to apply with following conditions: -

(a) They should be given age relaxation.”

26. Once there is a provision for age relaxation contained in a governmental order, nothing prevented the Appellant to participate in the selection process and seek age relaxation in terms of the office order dated 19.10.2015. The Appellant having not applied against the advertisement, now cannot be permitted to seek regularization in violation of the rules and the policy.

27. The learned Single Judge has duly considered and appreciated all the submissions, and thereafter held that even if similarly placed individuals have been granted the benefit of regularization in 2006 and 2009, it does not mean that the same benefit can be extended to the petitioner as well, since according to the law laid down in *Uma Devi* (supra), appointment against sanctioned posts has to be made by following the due process of law, which should not be bypassed in any situation. Public appointments have to be in accordance with the constitutional scheme, giving wide publicity so as to allow equal and effective participation of all sections of the society.

28. We are also strengthened in our reasoning by the judgment of the Supreme Court in *Official Liquidator v. Dayanand*, (2008) 10 SCC, wherein the Supreme Court has held the law laid down in *Uma devi (supra)* to be binding on all Supreme Courts and High Courts. The Supreme Court has observed that the responsibility of creation of sanctioned posts exclusively vests with the employer and courts should be circumspect in exercising their powers of judicial review, and direct creation of posts only when the action of employers violates constitutional values; is patently arbitrary, or; mala fide. Therefore, in other scenarios, a direction for absorption/ regularisation of employees would violate Articles 14 and 16 of the Indian Constitution. The relevant paragraphs of the judgement are reproduced as under:

*“52. As mentioned above, while approving the reasons and conclusions recorded by the two High Courts and dismissing the appeals, this Court not only permitted the Government of India to frame a scheme modelled on the 1978 Scheme but also stayed implementation of the orders impugned in the appeal and the one passed by itself in the transferred writ petition. If the Court intended that all members of the company-paid staff working on the date of judgment i.e. 27-8-1999 [(1999) 8 SCC 560 : 2000 SCC (L&S) 74] should be absorbed in the regular cadres against Group C and D posts, then a simple direction to that effect would have been sufficient and there was no occasion to stay the implementation of the orders of the High Courts for six months with liberty to the Government of India to frame a new scheme within the same period. **The absence of such a direction shows that the Court was very much conscious of the fact that recruitment to the regular cadres is governed by the rules framed under Article 309 of the Constitution and it would be highly detrimental to public interest to issue direction for wholesale absorption/regularisation of the company-paid staff and thereby abrogate/stultify***

opportunity of competition to younger generation comprising more meritorious persons who may be waiting for a chance to apply for direct recruitment. Obviously, the Court did not want to sacrifice merit by showing undue sympathy with members of the company-paid staff who joined service with full knowledge about their status, terms and conditions of their employment and the fact that they were to be paid from the company fund and not Consolidated Fund of India. In this context, we may also mention that though the Official Liquidators appear to have issued advertisements for appointing the company-paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. As a result of this, only mediocres must have responded to the advertisements and joined as company-paid staff. In this scenario, a direction for absorption of all the company-paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

...
...
...
59. *The creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection, etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and laying down the qualification, etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides.*

...

....

....

61. In State of Karnataka v. Uma devi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.”

29. In fact we are supported by the judgment of the Supreme Court in ***Renu v. District & Sessions Judge***, (2014) 14 SCC 50, wherein in paragraph 35, it has been directed as under:

“35. In view of the above, the appeal stands disposed of with the following directions:

35.1. (i) All the High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

35.2. (ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance with the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab initio irrespective of any class of the post or the person occupying it.

35.3. (iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab initio and would remain unenforceable and unexecutable except such appointments which are permissible to be filled up without

advertisement e.g. appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all the candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc. if any.

35.4. (iv) *Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on zonal or divisional basis.*

35.5. (v) *The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad hocism.”*

30. Applying the ratio of the said judgment and the rationale of the learned Single Judge, we find no infirmity in the impugned judgment.

31. Thus, the present Appeal is dismissed in the above terms.

JASMEET SINGH, J.

VIPIN SANGHI, J.

SEPTEMBER 27, 2021/ ‘ms’