

F.M.A. 502 of 2019
Sri Bhola Nath Dey
Vs.
The Union of India & ors.

Ms. Malabika Saha,
Mr. Subhankar Das ... for the appellant.

Ms. Sucharita Biswas .. for the respondents.

Heard Ms. Malabika Saha, learned counsel for the appellant and Ms. Sucharita Biswas, learned counsel for the respondents.

Learned counsels of either side agree that the issue involved in this appeal is squarely covered by the decision of this Court dated 18th November, 2021 in MAT No.1863 of 2017 etc. batch. The operative portion of the order reads as follows:-

“Bearing in mind the above legal principle, if we examine the order dated 28th December, 2016 which was impugned in these appeals, we have no hesitation to hold that the Government had entered into the merits of the dispute. When the Conciliation Officer submitted his failure report, it was solely on the ground that the parties could not arrive at a consensus. The Government while exercising power under Section 12 (5) of the Act, which being an administrative function, is required to examine as to whether the reference sought for was either perverse or frivolous. Admittedly, there is no such

*finding rendered by the Government as to whether the reference sought for is either perverse or frivolous. If that is the case, then the Government could not have referred the decision of the Hon'ble Supreme Court in **Uma Devi (supra)** and declined to refer the dispute.*

*In our considered view, the decision in **Uma Devi (supra)** was rendered in a different factual background where the "back door entrants" sought for regularisation of the services as that of the regular employees, who had undergone a process of recruitment. In such cases concerning public employment where several organisations of the Government resorted to recruit the persons of their choice without undertaking a recruitment process, without notifying the vacancies and without complying with Articles 14 and 16(1) of the Constitution of India, in the background of those cases, the Hon'ble Supreme Court elaborately discussed all the issues and pointed out that persons who had illegally got employment without undergoing a recruitment process, cannot seek to get their services regularised after working for a considerable period of time. Therefore, in our considered view, the said decision may not be applicable to the facts and circumstances of these cases.*

*In any event, what the petitioner and other similarly placed persons sought for was a reference to the Industrial Tribunal for adjudicating their claim for absorption and regularisation in the rifle factory. Therefore, whether at all, the decision in **Uma Devi***

(supra) can be applied to the case of the petitioner and others is a matter which is touching upon the merits of the individual case, which obviously could not have been a reason to refuse to refer the dispute for adjudication. Therefore, we are of the considered view that the order passed by the Government dated 28th December, 2016 calls for interference.

Accordingly, the mandamus appeals are allowed. The order passed in the writ petitions are set aside. Consequently, the order passed by the Government of India on 28th December, 2016 is quashed and set aside and a direction is issued to the respondent nos.1 and 2 to refer the dispute raised by the petitioner and others, through their trade union and individually, to the Central Government Industrial Tribunal for adjudication.”

Thus, following the above decision, the appeal stands allowed and there will be a direction to the Government to refer the dispute within 12 weeks from the date of receipt of the copy of this judgment.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

