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

+ **LPA 623/2013**

SHRI DURGESH KUMAR NAYAKAppellant

Through: Ms. Shantha Devi and Mr.
Mayank Ranjan Yadav, Advs.

versus

**THE PRINCIPAL JUDGE, FAMILY COURT,
DWARKA**

.....Respondent

Through: Mrs. Avnish Ahlawat, SC
(Services), GNCTD along with
Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish
Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

20.11.2024

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1. This **Letters Patent Appeal**¹ is directed against the judgment handed down by the learned Single Judge on 20 February 2013 pursuant to which the writ petition instituted by the appellant has come to be dismissed.

2. The appellant appears to have questioned his termination on the ground that the same had come to be effected in violation of the principle of '*last come first go*'. The learned Single Judge has noted that originally in the writ petition various reliefs including that of regularization were claimed. However, the issue stood limited to termination after the judgment rendered by the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka and Ors. vs**



Umadevi and Ors,² came to be rendered.

3. Before us, it was conceded that the engagement of the petitioner on ad hoc basis was not preceded by any recruitment process which could be said to have been compliant with Articles 14 and 16 of the Constitution. The engagement of the petitioner thus clearly fell in the category of an ‘illegal’ appointment as distinguished from an ‘irregular’ engagement. The question of regularization consequently would not arise. This we note in light of the following pertinent observations rendered by the Constitution Bench:-

“**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 abovereferred 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.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their

¹ LPA

² (2006) 4 SCC 1



status as precedents.”

4. The invocation of the ‘last come first go’ principle and which essentially owes its genesis to Section 25G of the **Industrial Disputes Act, 1947**³ would have been pertinent provided the appointment of the appellant was found to be in accord with the principles flowing from Article 16 of the Constitution.

5. However, and since it was conceded that the engagement of the petitioner rested solely on a “walk-in interview” and was not preceded by any fair and transparent procedure of recruitment, the interference with the ultimate order of termination would have only resulted in the perpetuation of an illegality. Accordingly, and for all the aforesaid reasons, we find no merit in the challenge which stands raised.

6. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 20, 2024/RW

³ Act