



\$~1

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

+ **W.P.(C) 13332/2018**

JITENDER AND ORS.

.....Petitioners

Through: Mr. Anuj Aggarwal, Mr. Pradeep Kumar, Ms. Divya Aggarwal, Ms. Kritika Matta and Mr. Avinash Kumar, Advocates.

versus

**DELHI AGRICULTURAL MARKETING BOARD
AND ANR.**

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

14.11.2024

%

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking a direction to the Respondents to regularise their services on the post of Assistant Secretary-I ('AS-I'), with effect from the respective dates of their *ad hoc* promotions to the said post with all consequential benefits including arrears of salary. In the alternative, it is prayed that Respondents be directed to notify the Recruitment Rules for the post of Assistant Secretary-I and thereafter regularise the Petitioners.

2. Facts to the extent necessary and set out in the writ petition are that Delhi Agricultural Marketing Board/Respondent No. 1 is a Board constituted under the Delhi Agricultural Produce Marketing (Regulation)



Act, 1998 ('1998 Act') and is a statutory body. By Notification dated 02.07.1987, the Delhi Agricultural Marketing Board Secretarial Service Regulations, 1987 ('DAMBSSR') were notified in the Delhi Gazette. Regulation 3 of DAMBSSR provided Constitution of the Service and stipulated that on and from the date of commencement of these Regulations there shall be constituted a service common to the Board and the Market Committee to be known as Delhi Agricultural Marketing Board Secretarial Service which shall have four grades viz. Grade-I to Grade-IV. Regulation 6 provided the Method of Recruitment including the recruitment to the post of Assistant Secretary-I, whereby 75% of the vacancies were to be filled by promotion and 25% through direct recruitment.

3. It is stated that DAMBSSR were made in exercise of power conferred under Section 64 of Delhi Agricultural Produce Marketing (Regulation) Act, 1976 ('1976 Act') which was repealed by 1998 Act. Section 124 of the said Act provided for '*repeal and saving*'. By a Notification dated 07.02.2005, Delhi Agricultural Marketing Service Regulations, 2004 ('2004 Regulations') were notified in the Delhi Gazette which provided for recruitment to different posts, however, Rules for some posts including post of Assistant Secretary-I were not notified and therefore as per the Petitioners, the previous Rules which were part of DAMBSSR, 1987 were valid and ought to have been enforced.

4. It is further averred that by order dated 30.04.2003, Petitioners No. 3 and 8 were promoted as Assistant Secretary-I on *ad hoc* basis and subsequently by order dated 21.01.2014, Petitioners No. 4 and 6 were also promoted on *ad hoc* basis. Similarly, vide order dated 16.10.2014, Petitioners No. 2 and 5 and by order dated 22.07.2016, Petitioners No. 1 and



7 were promoted *albeit* on *ad hoc* basis. The promotions were after a proper selection process and on recommendation of the Departmental Promotion Committees ('DPCs') and after the Respondents were satisfied that Petitioners were eligible in all respects.

5. Petitioners urge that Respondents regularised the services of several persons appointed as Assistant Secretary-I from the dates of their *ad hoc* promotions vide order dated 18.06.2013 and vide order dated 21.06.2013 several officials promoted to the post of Assistant Secretary-II, Assistant, Mandi Supervisor, UDC etc. were also regularised. The Deputy Secretary (A) vide letter dated 21.08.2014 wrote to the Deputy Director of Respondent No.1 to notify the Recruitment Rules *inter alia* for the post of Assistant Secretary-I. Under a covering letter dated 24.05.2016, the draft Recruitment Rules were sent to the Respondents but the final Rules were never notified. Petitioners aver that information was received by them under Right to Information Act, 2005 on 25.01.2018 that there were 36 sanctioned posts of Assistant Secretary-I out of which 15 were filled and 21 were lying vacant. Correspondences on record demonstrated that Respondents always admitted that Petitioners were fulfilling the conditions under the draft Recruitment Rules for purpose of regularisation on the post of Assistant Secretary-I. However, there was total inaction on the part of the Respondents in notifying the final Recruitment Rules and/or regularising the Petitioners, which compelled them to file the present writ petition.

6. At the outset, Mr. Anuj Aggarwal, learned counsel appearing on behalf of the Petitioners points out that Petitioner No.1 expired on 08.06.2019 but no steps were taken to bring his legal heirs on record and the petition stands abated *qua* Petitioner No.1.



7. On merits, it is argued that Petitioners were appointed to the post of Assistant Secretary-I on *ad hoc* basis on different dates. Petitioners No. 3 and 8 were appointed in 2003 while the others between 2014 and 2016, through a regular process of selection and after Respondents were satisfied that they fulfilled all the essential qualifications required for the post. Over a period of nearly one decade has passed, neither the Respondents have notified the proposed Recruitment Rules for the post in question nor have they regularised the services of the Petitioners on the plea that Rules have not been notified. Petitioners are being discriminated inasmuch as Respondents have regularised some persons working on the post of Assistant Secretary-I on *ad hoc* basis as also on various other posts. It is further urged that DAMBSSR for the post of Assistant Secretary-I were never repealed and are still valid and enforceable and ought to be followed by the Respondents. Reliance is placed on the judgment of the Division Bench of Punjab and Haryana High Court in ***Sumangal Roy v. Union of India and others, 2007 SCC OnLine P&H 1483***, wherein the Court examined the nature and the manner of the appointment of the Petitioners and held that appointments made through a regular process of selection cannot be termed as *ad hoc* and therefore, Petitioners would be entitled to be treated as regular appointees from the dates of their initial appointments.

8. Mrs. Ahlawat, learned Standing Counsel appearing on behalf of the Respondents, relying on the affidavit filed on behalf of the said Respondent fairly submits that Petitioners were appointed through regular process of appointment on the post of Assistant Secretary-I, on recommendations of properly constituted Selection Committees *albeit* on *ad hoc* basis. She further submits that DAMBSSR were repealed by 2004 Regulations which



came into force w.e.f. 07.02.2005, although in the said Notification, there were no RRs for the post of Assistant Secretary-I. A Committee of Officers of DAMB/APMCs was appointed, who recommended the draft RRs for the post of Assistant Secretary-I and Deputy Secretary. Another proposal for repeal of Section 78 of the 1998 Act was also sent and Respondent No. 1 vide its Resolution No. 55/2010 approved the proposal for deletion of the pre-condition of departmental examination from Section 78 and the matter for amendment was submitted to the concerned department. It is further submitted that RRs for the post of Assistant Secretary-I and amendment in the 1998 Act is still pending consideration and so far, final RRs have not been notified.

9. Heard learned counsels for the parties.

10. Indisputably, Petitioners have been promoted to the post of Assistant Secretary-I on the dates aforementioned through a regular process of selection and on recommendations of duly constituted DPCs. Eligibility of the Petitioners to hold the said posts is therefore beyond question. From the averments and material placed on record, it is equally undisputed that there were 36 sanctioned posts of Assistant Secretary-I, out of which more than 20 are lying vacant. Petitioners have worked on the posts uninterruptedly and without any complaint. Petitioners have also placed on record instances of similarly placed persons who were appointed on the post of Assistant Secretary-I on *ad hoc* basis and have been regularised pending Notification of the proposed RRs. There has never been any effort by the Respondents to revert the Petitioners to their substantive posts in the feeder cadres, which is indication of the fact that posts are in existence and their services are required on the said posts. Even today, there does not seem to be any serious



dispute with respect to the Petitioners continuing on the post of Assistant Secretary-I and/or their regularisation pending Notification of the proposed RRs, which as and when notified would be prospective in application unless retrospective effect is given in the Notification.

11. In my view, case of the Petitioners squarely falls within the four corners of the judgment of the Supreme Court in ***Vinod Kumar and Others v. Union of India and Others, 2024 SCC OnLine SC 1533***, where the Supreme Court has observed that essence of employment and rights thereof are to be determined by looking at the actual course of employment as it has evolved over a period of time. Continuous service in the capacity of regular employees, performing duties indistinguishable from those in permanent posts and their selection through a process that mirrors the process of regular recruitment constitute a substantive departure from a temporary and scheme specific nature of initial engagement. It was held that the appellants in that case were promoted by a process overseen by DPCs and their sustain service over several years without any indication of temporary nature of their roles merited a reconsideration of their employment status. Significantly, the Supreme Court also observed that the judgment in ***Secretary, State of Karnataka and Others v. Uma Devi (3) and Others, (2006) 4 SCC 1***, itself distinguishes between irregular and illegal appointments underscoring that the appointments made after following the procedure for regular appointments such as conduct of written examination or interview etc. cannot be termed as illegal.

12. In ***Uma Devi (supra)***, the Supreme Court observed that there may be cases where irregular appointments (not illegal appointments) are made of people who are duly qualified and against duly sanctioned posts and



employees have continued to work for 10 years or more but without intervention of the Courts or Tribunals, question of regularisation of their services must be considered on merits. The principles elucidated in ***Vinod Kumar (supra)*** and ***Uma Devi (supra)***, were recently echoed in ***Rajkaran Singh and Others v. Union of India and Others, 2024 SCC OnLine SC 2138*** and the Supreme Court observed that the essence of employment cannot be merely determined by initial terms of appointment and applied this principle to the case under consideration and held that the appellants were consistently treated as equivalent to regular Government employees and mere classification as temporary was only a formal nomenclature.

13. It bears repetition to state that in the present case, Petitioners were promoted to the post of Assistant Secretary-I through a regular process of promotion after satisfying all eligibility criteria and on recommendations of DPCs and have continued on sanctioned posts over a considerable period of time. The trajectory of the career path shows that they were performing jobs indistinguishable from the regular employees and significantly Respondents made no effort to revert them to the feeder cadres understanding the method by which they were promoted. Petitioners have illustrated through Office Orders that several other persons appointed as Assistant Secretary-I were regularised though their initial appointments were on *ad hoc* basis and this position is uncontroverted.

14. In view of the aforesaid, this writ petition is allowed directing the Respondents to regularise the service of the Petitioners from the respective dates of their appointments on the post of Assistant Secretary-I on *ad hoc* basis, save and except, in the case of Petitioner No. 1 who has expired during the pendency of this petition and the legal heirs have chosen not to



contest the petition. All consequential benefits flowing out of regularisation shall be granted to the Petitioners.

15. Writ petition stands disposed of in the aforesaid terms.

JYOTI SINGH, J

NOVEMBER 14, 2024/jg/shivam