

Harinder Pal Kaur Vs. Director Establishment W/C Dda and anr.

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Court : Delhi

Decided On : Sep-13-2013

Judge : Valmiki J. Mehta

Appellant : Harinder Pal Kaur

Respondent : Director Establishment W/C Dda and anr.

Advocate for Pet/Ap. : Mr. Sunil Kumar

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.5824/2013 %
HARINDER PAL KAUR Through:

13. h September , 2013 Petitioner Mr. Sunil Kumar, Adv. VERSUS DIRECTOR
ESTABLISHMENT W/C DDA & ANR. Through: Respondents CORAM:
HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or
not?. VALMIKI J.

MEHTA, J (ORAL) 1. In RSA 182/2010 titled as Delhi Development Authority Vs.
Khem Singh & Ors. the following order was passed on 10.2.2012.

1. After arguments, it is agreed by the parties that the impugned judgments be set
aside, however, counsel for the respondents/plaintiffs states that his
clients/respondents/plaintiffs are covered by the exception created in para 53 of
the judgment of the Constitution Bench of the Supreme Court in the case of

Secretary, State of Karnataka vs. Uma Devi, 2006 (4) SCC 1.

2. Counsel for the respondents/plaintiffs states that his clients were qualified and sanctioned posts were available. It is argued that, in fact, there were further promotions which were granted to the respondents/plaintiffs.

3. Since all these aspects were not in issue in the present suit, and therefore, there is no such issue framed nor any evidence recorded, accordingly it is agreed that the respondents/plaintiffs will be entitled to make a comprehensive representation to the appellant/defendant in terms of para 53 of the judgment of the Supreme Court in the case of Uma Devi (supra) and this representation will be decided sympathetically by the appellant/defendant in accordance with law. Let the representation be made by the respondents/plaintiffs within a period of 2 weeks from today and the appellant will decide the same within a period of 8 weeks thereafter.

4. In case any disputes survive thereafter, the respondents/plaintiffs will be entitled to approach the Court of law for appropriate reliefs.

5. The appeal is disposed of subject to the aforesaid observations.

2. This order shows that the judgment by which the suit was decreed against the DDA/appellant in RSA 182/2010, was set aside. Opportunity was granted in terms of para-3 to make a comprehensive representation in terms of para 53 of the judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi, 2006(4)SCC 1. Para 53 of Umadevis case (supra) reiterated a limited exception for regularization of those employees, who were qualified and were not appointed against vacancies in sanctioned posts but were not appointed by means of regular selection process where advertisements were issued in newspapers or persons called through the employment exchange. In para 53 Umadevis case (supra) the exception which was created was that if persons were working for 10 years in their posts, they were duly qualified, and they were appointed against vacancies in sanctioned post, authorities were to create schemes for regularization of only these irregular employees.

3. Counsel for the petitioner concedes that petitioner was regularized as an employee of DDA in 1991. Therefore, really the petitioner is not seeking regularization in terms of para 53 of Umadevis case (supra) because petitioner herself says that she is already a regular employee of DDA.

4. Counsel for the petitioner argued before me that since petitioner was given a work of a clerk instead of a mate, petitioner should be paid the pay of a clerk. This argument, in my opinion, cannot be said to arise out of an order passed in the order dated 10.2.2012 passed by this Court in RSA 182/2010 and in which the only direction was to consider regularization in terms of para 53 of the judgment in Umadevis case (supra). The order dated 10.2.2012 in RSA 182/2010 records that the judgments which were passed by the courts below were set aside i.e the right which the petitioner claimed and were granted by the civil courts were set aside, and only limited direction was issued to consider the claim of the petitioner as per para 53 of the judgment in Umadevis case (supra). Para 53 of Umadevis case (supra) since only entitled a person to be claimed for regularization, and petitioner already stands regularized, no rights arise in favour of the petitioner to question the impugned order dated 26.6.2012 passed by the respondent no.1.

5. Therefore, the challenge to the order dated 26.6.2012 on the ground that the order dated 10.2.2012 passed in RSA 182/2010 does not stand complied with in terms of para 53 in Umadevis case (supra) is without substance and is rejected.

6. I may however state that in case the petitioner seeks to invoke the doctrine of equal pay for equal work, including by challenging the administrative order dated 8.1.2010 passed by the employer/DDA, then that would have to be a subject matter of independent proceedings wherein the petitioner will have to make out a case for application of the doctrine of equal pay for equal work, and which is alleged to exist on the basis that petitioner claims that she worked as a clerk and therefore was entitled to the benefits which a clerk gets with the DDA/employer.

7. The writ petition is dismissed with the aforesaid observations, leaving the parties to bear their own costs. SEPTEMBER 13 2013 ib WPC 5824/2013 VALMIKI J.

MEHTA, J.

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