

Sunil Kumar Vs. Delhi State Mineral Development Corporation and anr.

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SooperKanoon Citation : sooperkanoon.com/713971

Court : Delhi

Decided On : Jan-20-2006

Reported in : 129(2006)DLT605; 2006(87)DRJ244; (2006)IIILLJ67Del;
2007(1)SLJ446(Delhi)

Judge : Markandeya Katju, C.J. and; Madan B. Lokur, J.

Appeal No. : LPA No. 218/2000

Appellant : Sunil Kumar

Respondent : Delhi State Mineral Development Corporation and anr.

Advocate for Def. : Monika Sharma, Adv.

Advocate for Pet/Ap. : G.D.Gupta, Sr. Adv. and; Alok Singh, Adv

Disposition : Appeal dismissed

Judgement :

ORDER

The competent authority is pleased to terminate the services of the following employees who were engaged on purely adhoc basis with immediate effect. They accordingly stand realized in the afternoon today:-

Serial No. Name Designation
1. Shri Sri Ram Mann AC-III
2. Mrs.Madhuri AC-III
3. Shri Sunil Kumar Asstt. Store Keeper
4. Shri Brij Kishore Tiwari Dresser
5. Shri

Sumer Singh Roneo Operator6. Shri Shiv Saran Sharma Dak Messenger7. Shri B.S.Gyrang Security GuardSd/-(S.A.Ahmed)Asstt. Manager (P)ALL CONERNED.COPY TO:1.Deputy Manager (Accounts), DSMD, New Delhi with the request that their salary may be released after receipt of No dues certificate from personal cell.

2. Officer in charge concerned3. Sr.P.A. to GM (P&A;)4. Sr.P.A. to CM (T&P;)5. Personal file (s)Sd/- (R.D.Upadhyay)True Copy COPY TO:1.Deputy Manager (Accounts), DSMD, New Delhi with the request that their salary may be released after receipt of No dues certificate from personal cell.2. Officer in charge concerned3. Sr.P.A. to GM (P&A;)4. Sr.P.A. to CM (T&P;)5. Personal file (s)Sd/- (R.D.Upadhyay)True Copy

4. A perusal of the order dated 30.6.1993 shows that petitioner/appellant was engaged on purely adhoc basis.

5. Paragraph 8 of the impugned judgment states :-

It may be noticed that the Rules of respondent No. 1 at the same time do not provide that after completion of temporary service of three years the employee would automatically become regular employee or that he would be entitled to regularization of his service. Respondent No. 1 in counter-affidavit, has specifically stated that the petitioners were appointed in 1989 in view of the urgency and to tie up the situation, as it existed then, on adhoc/temporary basis; that these temporary/adhoc appointments were extended from time to time for short intervals; that the respondent-Corporation's activities have been curtailed by the Government to a very large extent and in the end of 1992 the activities of the respondent-Corporation in Bhatti Mines were completely barred/banned by the Government and the area was taken outside the jurisdiction of the Corporation for mining activities and the said area has been earmarked for Wildlife Sanctuary, which is a different department of Delhi Administration. There is no denial of the fact that Bhatti Mining operations/activities of respondent No. 1 came to be banned/barred by the Government, leading to the termination of the services of the petitioner vide impugned order (Annexure-E). The petitioners completing three years as temporary employees by itself will not clinch the issue. It need hardly be

said that the regularization of an adhoc/temporary employee has to be against the existing regular vacancies. When there is complete ban imposed by the Government against the Bhatti Mining operations by respondent No. 1, there will be no question of filling up any regular vacancy because respondent No. 1 could not have filled up any regular vacancy. The only right of the petitioners subject to other things would be to be considered for regularization. In the instant case, the question of regularization otherwise also would not arise since the Bhatti Mines operations by respondent No. 1 have been completely banned/barred by the Government and the project came to be closed by respondent No. 1, culminating into the termination of the services of the petitioners. It need hardly be said that a non-existing concern (respondent No. 1) can not be directed to create a permanent/regular post and absorb the petitioners. Thus, there is no question of any regular vacancy existing much less filling up of the same by respondent No. 1.

6. We fully agree with the aforesaid reasoning of the learned Single Judge.

7. It is well settled that a temporary employee has no right to the post vide State of Uttar Pradesh and Anr. v. Kaushal Kishore Shukla : [1991]1SCR29 . Hence, the petitioner/appellant has no right to be regularized.

8. In Delhi Tepedic Unmoolan Samiti v. Babita Rani and Ors. LPA 2554/2005, decided on 16.1.2006 a Division Bench of this Court has held that it is for the concerned authority to consider whether an employee should be regularized or not. The court cannot give any direction for regularization. The entire case law has been considered in the aforesaid decision and the same may be seen.

9. Following the aforesaid decision this appeal is dismissed.