

Sushil Kumar and ors. Vs. University Grants Commission

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Court : Delhi

Decided On : Jul-10-2013

Judge : Valmiki J. Mehta

Appellant : Sushil Kumar and ors.

Respondent : University Grants Commission

Advocate for Def. : Ms. Mamta Tiwari

Advocate for Pet/Ap. : Ms. Bhakti Pasrija

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C) No.4338/2013 10th July, 2013 % SUSHIL KUMAR AND ORS. Through: Petitioners Ms. Bhakti Pasrija, Advocate. versus UNIVERSITY GRANTS COMMISSION Respondent Through: Ms. Mamta Tiwari, Advocate. CORAM: HON'BLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not? VALMIKI J.

MEHTA, J (ORAL) 1. By this writ petition, petitioners claim regularization with the respondent/University Grants Commission (UGC). Petitioners in fact have never worked with UGC as employees of UGC but were placed by private placement agencies for working with the respondent. Petitioners are therefore not employees of respondent but of private contractors.

2. Even if the petitioners are working as ad hoc employees or casual employees of the respondent, services of such persons cannot be regularized in view of ratio of the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka & Ors Vs. Umadevi & Ors. 2006 (4) SCC 1. The ratio of the judgment of the Supreme Court in the case of Umadevi (supra) reads as under: (I) The questions to be asked before regularization are: (a) (i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates (b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter. (II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated. (III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality (except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization. (IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process. (V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the

same will result in stoppage of recruitment through regular appointment procedure. (VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization. (VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution.

3. A nearly identical issue came up before this Court just few days back with respect to the present respondent itself and that petition being W.P.(C) No.4071/2013 titled as Kanishk Sharma and Ors. Vs. University Grant Commission and Ors. decided on 2.7.2013 was dismissed by me. Relevant para of that judgment read as under:6. The judgment of the Constitution Bench in the case of Umadevi (supra) came to be passed in order to prevent back door entry in public employment. What was happening was that without following the due process of public employment i.e without their existing of sanctioned posts and without open competition taking place by calling the prospective employees through public advertisement and employment exchange, adhoc or temporary employment or contractual employment are used to be made and thereafter such persons used to get regularized. The Supreme Court held that the rights in favour of a limited number of persons who have secured employment otherwise than through advertisements in newspaper or through the employment exchange cannot prevail in favour of millions of people who are awaiting public employment through the regular mode. In my opinion, if I accept the writ petition, it would squarely fly in the face of the ratio of the Constitution Bench judgment in the case of Umadevi (Supra) and which states that there cannot be public employment unless there are vacancies in sanctioned post and such vacancies in sanctioned post are sought to be filled in by means of open competition by insertion of advertisements in newspapers and through the employment exchange. The judgments therefore cited on behalf of the petitioner, would have no application after the Constitution Bench judgment in the case of Umadevi (supra) because grant of prayers would be grant of public employment in violation of ratio of Umadevi (supra). Be that as it may I am dealing with each of the two judgments

relied upon by the petitioners hereafter.

4. In view of the aforesaid facts that the petitioners have never been employees of the respondent and at best they were casual employees of the respondent, therefore they cannot be regularized in view of the judgment in the case of Umadevi (supra).

5. This writ petition is accordingly dismissed, leaving the parties to bear their own costs. VALMIKI J.

MEHTA, J JULY 10 2013 Ne

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