

(2012) 01 AHC CK 0674

Allahabad High Court

Case No: C.M.W.P. No. 1629 of 2012

Vikas Kumar and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: Jan. 11, 2012

Acts Referred:

- Constitution of India, 1950 - Article 12, 16, 226

Citation: (2012) 133 FLR 105

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Advocate: Aditya Kumar Yadav and Mrityunjay Dwivedi, for the Appellant; Ramendra Pratap Singh, C.S.C, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard learned Counsel for the petitioners and perused the record. Petitioners are challenging the advertisement dated 8.12.2011 (Annexure-13 to the writ petition) published by New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA"), respondent No. 3 for making recruitment on various Class III and IV posts.

2. Learned Counsel for the petitioners contended that petitioners are working for a long time and, therefore, are entitled to be considered for regularisation and so long as they are not considered for regularisation, the post on which they are working, no recruitment by advertisement of vacancies can be made.

3. Learned Counsel for the petitioners, however, could not dispute that none of petitioners were ever engaged by respondent-authority by following procedure prescribed in statute consistent with Article 16 of the Constitution of India, i.e., by advertisement of vacancy giving opportunity of consideration to all other eligible persons. The petitioners in a wholly illegal manner without following any procedure

of selection were engaged abruptly by officials of NOIDA in a whimsical manner and they have been allowed to continue obviously with co-operation of authorities who did not admittedly follow prescribed procedure in law for making recruitment. Such appointments are in the teeth of Article 16 of the Constitution particularly when the authority is "State" under Article 12 of the Constitution. Considering such types of appointments the Constitution Bench of Apex Court in *Secretary, State of Karnataka v. Uma Devi* 2006 (109) FLR 826 (SC) : 2006 (42) AIC 935, held:

The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional Scheme.

4. Subsequently in some matters the observations made by Apex Court in para 53 of the judgment of *Uma Devi* (supra) were sought to be construed as if the persons even if their engagement made without following procedure prescribed in statute but continued for some times are entitled for regularisation but this misconstruction was clarified by Apex Court in subsequent decisions,, some of which are, [State of M.P. and Others Vs. Lalit Kumar Verma, Rajasthan Krishi Vishva Vidhyalaya, Bikaner Vs. Devi Singh, State of Karnataka and Others Vs. Sri G.V. Chandrashekar, Harminder Kaur and Others Vs. Union of India \(UOI\) and Others, Union of India \(UOI\) and Another Vs. Kartick Chandra Mondal and Another](#), *Satya Prakash and others v. State of Bihar and others*, 2010 (125) FLR 517 (SC) and [State of Rajasthan and Others Vs. Daya Lal and Others](#), .

5. The Apex Court consistently since then has held that in absence of any statutory provision if a person has been engaged in a wholly illegal manner without following procedure prescribed in statute and in violation of Article 16 of the Constitution, such person cannot be allowed to be regularised as that would amount to commanding the respondents to commit a patent illegality which is unconstitutional also.

6. In the circumstances, I do not find any right of petitioners to claim regularisation and the process adopted by respondents for filling up the vacancies by advertisement cannot be faulted legally or otherwise. Dismissed.