

(2013) 04 DEL CK 0004
Delhi High Court
Case No: W.P. (C) No. 2227/2013

Rajendra Singh and
Others

APPELLANT

Vs

University of Delhi
and Others

RESPONDENT

Date of Decision: April 9, 2013

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

This writ petition is filed by 15 petitioners who were appointed from time to time on ad hoc basis for fixed periods of about 89 days by the respondent No. 3-college. The details with respect to the employment and re-employment for different periods of each of the petitioners are given from pages 17 to 39 of the writ petition. On behalf of petitioners, it is contended that petitioners were selected through a regular recruitment process and have been given artificial breaks of services, but now the respondent No. 1-University by notification dated 4.2.2013 has directed appointment by regular recruitments in the posts requiring the qualifications of 10+2 at school level with an age limit factor thereby effectively disentitling the petitioners from employment. It is argued that since the petitioners have been working for long period of time i.e. for many years by giving only artificial breaks the respondents cannot terminate their services and seek appointment of different persons having qualifications which the petitioners do not have. It is also argued that as per the University of Delhi Recruitment Rules (Non Teaching Employees), 2008 regular service has been defined to include services rendered on ad hoc appointment, and therefore the petitioners should be taken as regular employees in service. Reliance is also placed upon an order of learned Single Judge of this Court in W.P. (C) No. 11399/2009 dated 1.6.2010 in the case titled as Rakesh Malhotra and Ors. Vs. UOI and Ors. on the basis of which it is pleaded that in identical

circumstances persons such as the petitioners who are Laboratory Assistants in W.P. (C) No. 11399/2009 were given fresh contractual employment till the disposal of the writ petition.

2. This issue of entitlement of persons appointed on ad hoc basis for regularization in employment had engaged the attention of Supreme Court since quite a few decades back. Some judgments of the Supreme Court directed regularization of casual employees or ad hoc employees whereas others did not give the benefit. Matter was ultimately referred to the Constitution Bench of the Supreme Court. The Constitution Bench in the case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), laid down the ratio that there cannot be regularization of persons who are appointed on casual basis or ad hoc basis or contractual basis inasmuch as appointment of such persons to qualified posts is not against vacancies in sanctioned posts through a regular recruitment process. The only exception which was carved out by the Supreme Court was where persons who were duly qualified, appointed against vacancies in sanctioned posts and had worked for ten years at the time of passing of the judgment in the case of Umadevi (supra) and such persons were required to be absorbed by the employer by framing appropriate policies. In the case of Umadevi (supra), the Supreme Court has laid down the following ratio:-

(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. In the present case, the admitted position is that the petitioners who are Lab Attendants or Office Attendants or Malis were appointed from time to time on ad hoc basis for fixed periods of 89 days. No doubt, these persons have been appointed through a regular recruitment process, however, in the writ petition itself the admitted position is that there could not be regular appointments when petitioners were appointed, as UGC had imposed a ban upon regular recruitment. UGC is entitled to impose ban inasmuch as the colleges are funded to a considerable extent by UGC and therefore colleges are bound by the terms and conditions with respect to appointment or employment or other aspects with respect to employees of different colleges functioning within the jurisdiction of UGC. Once there was a ban on recruitment obviously it cannot be said that there were vacancies in such sanctioned posts which were being filled in through the process of advertisement. I may note that the Supreme Court in the case of Umadevi (supra) has said that those persons who are casually employed or are contractual employees cannot claim legitimate expectation because they knew at the time of their employment the nature of their employment as not being a regular employment. The Supreme Court has said that there is no legitimate expectation of such persons to claim regularization inasmuch as equities which exist in favour of millions of people seeking public employment outweighs the equities in favour of the limited persons irregularly appointed and who cannot be regularized.

4. The facts of the present case show that if the reliefs are granted the same would fall foul of the ratio of the judgment of the Supreme Court in the case of Umadevi (supra). In fact in the judgment in the case of Umadevi (supra) Supreme Court has

directed that Courts shall not pass orders to stay the regular recruitment process which is undertaken by the State or instrumentalities of the State. Supreme Court has further observed that an employer is fully entitled to ensure that regular recruitment process takes place as per the recruitment rules. It is for the reasons given above that I cannot agree with interpretation of the expression "regular service" given in para 2(h) of the recruitment rules as has been canvassed by the petitioners because no rules can be in conflict with the ratio of the Constitution Bench judgment inasmuch as that the rules can provide for regularization of persons who could not otherwise be regularized in view of ratio in the case of Umadevi (supra). In view of the above there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.