

## Kumari Sakeena Bibi and Another Vs The A and N Administration and Others

**Court:** Calcutta High Court

**Date of Decision:** March 8, 2007

**Acts Referred:** Constitution of India, 1950 " Article 142

**Citation:** 111 CWN 490

**Hon'ble Judges:** Dipankar Datta, J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** Shyamali Ganguly, for the Appellant; S.K. Mandal, for the Respondent

### Judgement

Ashim Kumar Banerjee, J.

Kumari Sakeena Bibi and Smt. Laxmi are at present working as Gram Sevika on temporary basis. They were

initially appointed as daily rated Mazdoor under the Administration by an order dated March 2, 1994. They were conferred temporary status with

effect from September 01, 1993. They continued to work as Group-D staff while the Assistant Commissioner by his order dated July 26, 1995

appointed them as Gram Sevika considering their qualifications. On April 01, 2005, they made representation before the authorities for

regularization of their appointment in the post of Gram Sevika. Such representation was not acceded to. They were being paid as daily rated

Mazdoor although they were discharging duties as Gram Sevika with effect from July, 1995. Getting no response from the authorities they applied

before the learned Central Administrative Tribunal for a direction upon the respondent authorities to regularize their services in the post of Gram

Sevika The Administration opposed such prayer on the ground that they were working as Group-D staff. They were conferred with temporary

status vide order dated March 12, 1994. Their appointments in the post of Gram Sevika were ad hoc appointments and as such they were not

entitled to claim regularization. Moreover, they were given temporary status in Group-D post, and as such, they were not entitled to claim

regularization in the post of Gram Sevika being a Group-C post.

2. The learned Tribunal considered the rival contentions of the parties and held that then claim had no merit whatsoever. The Tribunal relied on a

decision of the Apex Court in the case of State of Karnataka & Others vs. Uma Devi reported in (2006)4 SCC 1.

3. Being aggrieved by and dissatisfied with the judgment and order of the learned Tribunal the applicants filed the instant writ petition

4. Ms. Shyamali Ganguly, learned counsel appearing, for the applicants contended that their learned Tribunal overlooked the observation of the

Apex Court in the case of Uma Devi (Supra) as contained in Paragraphs 44, 45 and 53 thereof. In the said paragraphs, the Apex Court observed

that the incumbents who were working more than 10 years on temporary and/or ad hoc basis the Government should find out ways and means to

regularize them. Relying on such observation of the Apex Court Ms. Ganguly contended that we should refer the matter to the Government to find

out ways and means to regularize the appointment of the applicants in the post of Gram Sevika.

5. We heard the parties at length. We have considered the rival contention of the parties. We are of the view that for a regular post the

Administration is under obligation to go for a regular recruitment process by which they should give opportunity to all eligible candidates to

compete for the said post. The Apex Court in the case of Excise Superintendent reported in (1996) 6 SCC 216 observed that wide publicity

should be made by the authority so that the eligible candidates could compete for the vacant post in a regular recruitment process. The Apex Court

also deprecated the practice of the Government to have backdoor appointments dehors the recruitment rules as has been done here. The

applicants were appointed as daily rated Mazdoor. If they were asked to discharge perennial duties the Government should go for a regular

recruitment process for filling up those vacant posts instead of giving backdoor appointments. In the instant case the applicants were not appointed

in a regular post. They were asked to discharge the duties of Gram Sevika although the said post is a Group-C post.

6. We have full sympathy for the applicants as they were stagnating as daily rated Mazdoor working for the Administration more than 10 years. At

the same time, we cannot overlook the fact that their regularization would debar eligible candidates to compete for the said posts. The Apex Court

in the case of Uma Devi (Supra) subscribed the same view as discussed above. While doing so, the Apex Court left it to the Administration to find

out ways and means to resolve the problem with regard to the casual employees who were working for more than 10 years. We also leave it to the

Administration to find out ways and means as observed by the Apex Court if they think it fit and proper. We, however cannot give any mandatory

direction which would be contrary to the fundamental principles of natural justice as it would debar eligible candidates to compete for the said

posts.

7. The Apex Court might have made such observation as Their Lordships are entitled to do under Article 142 of the Constitution. Such power is

not given to us by the Constitution. Moreover, we feel that in the present circumstances direction as prayed would be contrary to the mandate of

the Constitution.

8. In our view, interest of justice would sub-serve in the instant case. if we direct the Administration to go for a regular recruitment process for

appointment of Gram Sevika by giving opportunities to the applicants to compete for the said posts. Having regard to their past service the

Administration may by appropriate circular condone the present age of the applicants so that they can compete for the said post in the regular

recruitment process. With the above observations, the WPCT 005 of 2006 is disposed of without any order as to costs.

Dipankar Datta, J.

I agree.