

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 4329/1999

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Date of decision: 3rd May, 2010

JITENDRA

..... Petitioner

Through: Mr. K.C. Mittal, Ms. Ruchika Mittal and Mr. Sujeet Kumar Singh, Advocates.

Versus

**NATIONAL COMMISSION FOR SCHEDULED
CASTES & SCHEDULED TRIBES**

..... Respondent

Through: Mr. Jatan Singh and Mr. Sudeep Sudan,
Advocates for UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The petitioner has sought the relief of regularization in the post of Lower Division Clerk/Hindi Typist in the respondent Commission. It is the case of the petitioner that he has been working with the respondent Commission since 8th November, 1993 (i.e. since six years prior to the institution of this petition) on daily wage basis; that he was recruited as a sponsored candidate through Employment Exchange; that the respondent Commission had taken a typing test of the petitioner and declared him successful in the same and appointed him as a Hindi Typist. It is further his

case that the nature of the work performed by him is in the form of a regular duty; that he has before the filing of the petition worked for more than 200 days with the respondent Commission. He contends that if at this belated stage his services are terminated, he is ineligible to join any other Government department.

2. The documents filed by the petitioner show unequivocally that the appointment of the petitioner was on daily wage basis and expressly made terminable at any time without assigning any reason and the petitioner was also notified that he will have no claim for regular appointment in the respondent Commission.

3. In the aforesaid facts, at the outset only, it was put to the counsel for the petitioner, whether the claim in the present petition was not barred by dicta of the Supreme Court in *Secretary, State of Karnataka Vs. Umadevi* AIR 2006 SC 1806. Constitution Bench of the Supreme Court in the said judgment has held that it is not proper for the courts in the exercise of jurisdiction under Articles 32 and 226 of the Constitution of India, to regularize, based on long period of their service or engagement. It was held that the same would tantamount to perpetuating an illegality. The Constitution Bench further held that unless the appointment is in terms of the relevant rules, the same would not confer any right on the appointee; temporary employee was held to be not entitled to maintain a claim to be

made permanent merely because he has continued for a time beyond the term of his appointment; it was held that due to long service an ad hoc employee does not acquire any right to permanent appointment.

4. Confronted with the aforesaid, the counsel for the petitioner relies on ***Punjab State Warehousing Corporation Vs. Manmohan Singh*** (2007) 9 SCC 337, ***Government of A.P. Vs. K. Brahmanandam*** (2008) 5 SCC 241. The Supreme Court in ***Punjab State Warehousing Corporation*** (supra) has followed the judgment in ***Umadevi*** (supra). However, while narrating facts of that case in the judgment it is stated that prior to appointment neither an advertisement was issued nor even the Employment Exchange was notified in regard to the then existing vacancies. Relying on the same, it is contended that since the petitioner had been sponsored through the Employment Exchange, his appointment was not ad hoc or temporary but in the regular post and the judgment in ***Umadevi*** does not apply. In ***Brahmanandam*** (supra) the recruitment rules mandated recruitment by advertisement in two newspapers having large circulation and the Employment Exchange was also to be notified regarding the vacancies.

5. The respondent Commission in the present case has filed a counter affidavit in which it has *inter alia* been stated that though the test of proficiency of the petitioner in typing was taken before his temporary employment on daily wages but it is to be judged by the Staff Selection

Commission under Department of Personnel and Training, Government of India which is the competent authority to recommend qualified candidates for the post of LDC belonging to Central Secretariat Clerical Services Cadre in Central Government and its attached/subordinate offices, as to whether the petitioner is a qualified typist or not. It is further pleaded that the petitioner has not qualified written and typing test conducted by the Staff Selection Commission for being appointed as LDC on regular basis. It is further pleaded that the respondent Commission has been constituted under the provisions of Article 338 of the Constitution of India and functioning like a Ministry or a Department of the Government of India insofar as the administrative matters are concerned; there is no nomenclature as 'Typist' in the respondent Commission; that the regular post of LDC exists but it belongs to Central Secretariat Clerical Service Cadre of Ministry of Social Justice and Empowerment; regular appointments are made either by direct recruitment through Staff Selection Commission by open advertisement or by promotion of educationally qualified employees who qualify the departmental test.

6. From the counter affidavit of the respondent Commission it is borne out that the recruitment procedure in the respondent Commission is through the Staff Selection Commission or through promotion. There is no procedure for recruitment by notifying the vacancies to the Employment Exchange. The observation in *Punjab State Warehousing Corporation* is

not such which can be held to make filling up of vacancies through Employment Exchange a regular form of appointment in the respondent Commission. The judgment in *Brahmanandam* is also of no help to the petitioner inasmuch as in that case the prescribed recruitment procedure included notifying the Employment Exchange. The same is not the position here.

7. Unless otherwise prescribed in the recruitment rules, procedure of filling up of vacancies by notifying the Employment Exchange does not appear to be a normal mode. The Division Bench of this court in its judgment dated 26th April, 2007 in LPA 1620/2006 titled *NCT of Delhi Vs. Anubha Pant* held an appointment without issuing advertisements inviting applications to be irregular appointment. Merely because the respondent Commission, in order to fulfill its temporary requirements called for names from the Employment Exchange, it would not make the petitioner a regular employee of the respondent Commission.

8. There is another aspect of the matter. As aforesaid, from the documents filed by the petitioner it is abundantly clear that the petitioner had all the time known that his appointment was ad hoc or on daily wage, temporary and terminable at any time and notwithstanding the petitioner having been sponsored by the Employment Exchange, his employment was not a regular appointment.

9. This court while issuing notice of the petition had directed the respondent Commission to maintain status quo regarding the service of the petitioner. The said order has remained in force, now for the last about 11 years. The petitioner has now been in employment of respondent Commission for nearly 17 years/18 years. Though there is merit in the contention of the petitioner that the petitioner, after such a long lapse of time, is now not left eligible for absorption elsewhere or in any other Government department but this court is bound by the rule of *stare decisis*. The Constitution Bench of the Supreme Court having laid down the law in *Umadevi*, this court on sympathetic grounds cannot go contrary to the said judgment. All that this court can observe is that since the petitioner has worked with respondent Commission now for about 17-18 years, the respondent Commission ought to consider the case of the petitioner sympathetically. The petition is therefore dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd May, 2010
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