

Mamta Dhasmana And Ors vs Union Of India & Anr on 23 July, 2020

Author: Jyoti Singh

Bench: Jyoti Singh

\$~A-8

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4494/2020

MAMTA DHASMANA AND ORS.

Through

..... Petitioners
Mr. Ambar Qamaruddin and Mr.
Ekansh Bansal, Advocates

versus

UNION OF INDIA & ANR.

Through

..... Respondents
Ms. Mrinalini Sen and Ms. Kritika
Gupta, Advocates with Mr. Partha
Kansabanik, Under Secretary
(Minority Cell) for R-1

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 23.07.2020 Hearing has been conducted through Video Conferencing. C.M. 16199/2020 (Exemption) Allowed subject to all just exceptions.

Application stands disposed of.

C.M. 16200/2020 (Exemption from paying Court Fee) This application has been filed seeking exemption from filing requisite court fee. The application is disposed of with a direction to the Applicant to file the same within 72 hours from the date of resumption of regular functioning of the Court.

W.P.(C) 4494/2020 and C.M. 16198/2020 (stay) Petitioners herein, who have been working in different capacities, as Stenographers, Lower Division Clerks, Peons, Drivers, etc. Respectively, in National Commission for Minority Educational Institutions at New Delhi, have filed the present petition seeking a direction to the Respondents to absorb / treat them as regular employees by accommodating them against the regular sanctioned posts, on account of the fact that they have been working with the Commission for the last 14-15 years and are now over aged for employment in any other Establishment / Department.

Learned Counsel for Petitioners draws the attention of the Court to the order passed by the Supreme Court on 18.02.2020 assailing the final judgement dated 21.08.2017 in W.P.(C) 9503/2016 passed

by a Division Bench of this Court in the earlier round of litigation by Petitioners herein. Relevant part of the order of Supreme Court reads as under :-

" It is agreed to by the parties that the petitioners shall file a representation for regularization as they are serving with effect from 2005 and they have rendered their services for approximately 14 years. Let the representation be filed within a period of one month from today. Let the representation be considered and decided by the respondents sympathetically and by a reasoned order within a period of four months from the date it is filed.

The observations made by the High Court shall not come in the way of the petitioners in filing and consideration of representation.

The petitioners' case can also be considered for continuation of services vis-a-vis to the posts which have been notified.

In view of the above, the Special Leave Petition is disposed of."

Taking the Court through the order, learned Counsel vehemently submits firstly that, the order passed was a consent order. He further submits that what weighed with Supreme Court was the fact that Petitioners have worked approximately for 14 years. Supreme Court mandated the Respondents to consider the representation sympathetically and by a reasoned order within a period of four weeks, also observing that the observations of the High Court in the judgement dated 21.08.2017 will not come in the way of the consideration of the representation of the Petitioners.

Learned counsel further points out that pursuant to the order of the Supreme Court, representation has been decided by an order dated 01.06.2020 and has been rejected. He points out that from a perusal of the impugned order, it is clear that despite the dicta of the Supreme Court, the Respondent has taken into consideration observations made by the High Court in the judgment dated 21.08.2017. He also draws the attention of the Court to para 11 of the Impugned Order, where it is clearly mentioned that engagement of the Petitioners was irregular and temporary. He submits that since Respondents themselves have admitted that appointment of Petitioners was irregular and not illegal, the case of the Petitioners is squarely covered by the judgement of the Supreme Court in State of Karnataka and Ors. vs. Uma Devi and Ors. (2006) 4 SCC 1 as well as by the judgement in State of Karnataka and Ors. vs. M.L. Kesari and Ors. (2010) 9 SCC 247.

Learned Counsel further submits that the Commission has already initiated the process of regular appointments and therefore, there is an urgency for hearing the matter.

Ms. Sen, appearing on behalf of Respondent No.1/Union of India, on an advance copy, seeks to justify the Impugned Order dated 01.06.2020. She further argues that the Petitioners having been appointed without any process of selection and the appointments were not against any regular sanctioned posts and, therefore, they cannot claim a right to absorption or regularization. She further points out that the Recruitment Rules of 2016 only have deputation as a mode of

recruitment and the validity of the Recruitment Rules was upheld by the High Court in the judgement dated 21.08.2017, in the first round of litigation.

Ms. Sen further submits that the observations of Supreme Court were only to consider the representation and it was left to the discretion of the Competent Authority to take the final decision in the matter.

Ms. Sen further submits, on instructions, that Recruitment process for filling up the vacancies on regular basis is complete and only Integrity/antecedent Verification remains to be conducted.

Issue notice.

Ms. Sen accepts notice on behalf of Respondent No.1 and seeks a period of two weeks to file Counter Affidavit.

Let Counter Affidavit be filed within two weeks. Rejoinder thereto, if any, be filed before the next date of hearing.

Issue notice to Respondent No.2, returnable on 25.08.2020. Petitioners are at liberty to serve Respondent No.2, through electronic mode.

Supreme Court while permitting the Petitioners to approach the High Court for seeking appropriate relief, by its order dated 08.07.2020, had granted status quo with respect to the employment of the Petitioners, for a period of 15 days. Relevant part of the order dated 08.07.2020 is extracted hereunder :-

"The learned counsel appearing for the petitioners seek leave to withdraw this petition with liberty to approach the High Court for appropriate relief.

With the liberty as above, the Writ Petition is dismissed as withdrawn.

However, we direct that the status quo with respect to employment as on today shall be maintained for 15 days from today."

Since Integrity/Antecedent Verification of the persons selected for regular appointment is still underway and is likely to take some time, status quo on the employment of the Petitioners shall be maintained by the Respondents, till the next date of hearing. If, in the meantime, the process is completed and any further steps are required to be taken by the Respondents towards appointment of the regularly selected persons, Respondents would seek leave of the Court before issuing the letters offering appointment.

List on 25.08.2020.

JYOTI SINGH, J JULY 23, 2020 yg