

Vinod Kumar Sharma And Ors vs Union Of India And Anr on 16 May, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 17291/2022 & CM Appls. 55018/2022, 2149
VINOD KUMAR SHARMA AND ORS.

Through: Mr. Colin Gonsalves,
Ms. Hetvi Patel, Ad
Mr. Ankur
Mr. Anshuman Mehrotr
Petitioner Nos.2, 1
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versus

UNION OF INDIA AND ANR.

Through: Mr. Ripu Daman Bhardwaj
with Mr. Kapil Dev
Mr. Kushagra Kumar,
with Mr. Ajay Ekka,

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% 16.05.2023

1. On the last date of hearing, this Court had passed the following order:-

"1. We have heard Mr. Colin Gonsalves and Mr. Ankur Chhibber, learned counsel for the petitioners, for some time. During the course of hearing, Mr. Gonsalves would submit that as recently as on April 12, 2023 the Safdarjung Hospital has issued a notification for recruitment of Nursing Staff against 211 vacancies in Safdarjung Hospital and 84 vacancies in Dr. Ram Manohar Lohia Hospital and the maximum age limit prescribed is 35 years.

2. They state, the petitioners without prejudice to their rights in the petition can apply for the said selection process provided the respondents grant age relaxation.

3. Mr. Ripu Daman Bhardwaj states that he shall take instructions on the submission made by Mr. Gonsalves and Mr. This is a digitally signed order.

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QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 10:08:00 Chhibber.

4. At his request, renotify on May 16, 2023."

2. Mr. Ripu Daman Bhardwaj states that he has instructions to convey to the Court that as per the decision of the competent authority, the petitioners can be only permitted to appear in the selection process (held under the aegis of AIIMS) which has been undertaken in terms of notification of April 12, 2023 as per the Recruitment Rules. In other words, with the maximum age of eligibility being 35 years and as the petitioners concedingly are above that age they cannot be permitted to participate in the selection process.

3. Mr. Colin Gonsalves would rely upon the judgment of the Supreme Court in the case of University of Delhi v. Delhi University Contract Employees Union & Ors., 2021 SCC OnLine SC 256, to contend that even the Supreme Court has, in identical facts where the contractual employees working in Delhi University, permitted the contractual employees to compete with the available talent through the public advertisement subject to the contract employees getting the age relaxation. Though, Mr. Gonsalves would also submit that the petitioners should be entitled to the benefit of past service as put in by them, we are unable to accede to the later submission of Mr. Gonsalves, as of now. The relevant paragraphs of the judgment as relied upon by Mr. Gonsalves are reproduced as under:-

"17. It is true that, as on the day when the judgment in Umadevi¹ was delivered by this Court, the contract employees had put in just about 3 to 4 years of service. But, as of now, most of them have completed more than 10 years of service on contract basis. Though the benefit of regularization cannot be granted, a window of opportunity must be given to them to compete with the available talent through public advertisement. A separate and exclusive test meant only for the contract This is a digitally signed order.

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18. We, therefore, direct that all the concerned contract employees engaged by the University be afforded benefits as detailed in paragraphs 6 and 7 of the affidavit dated 09.03.2021 with following modifications:

(a) The benefit of age relaxation as contemplated in paragraph 6 of the affidavit without any qualification must be extended to all the contract employees.

(b) In modification of paragraph 7 of the affidavit, those employees who were engaged in the year 2011 be given the benefit of 10 marks in the ensuing selection process while for every additional year that a contract employee had put in, benefit of one more mark subject to the ceiling of 8 additional marks be given. In other words, if a contract employee was engaged for the first time in the year 2010, he shall be entitled to the benefit of 11 marks, while one engaged since 2003 shall be given 18 marks, as against the appointee of 2011 who will have the advantage of only 10 marks. The contract appointees of 2012 and 2013 will have the advantage of 9 and 8 marks respectively.

(c) The Public Notice inviting applications from the candidates shall specifically state that the advantage in terms of the order passed by this Court would be conferred upon the contract employees so that other candidates are put to adequate notice.

(d) All the contract employees shall be entitled to offer their candidature for the ensuing selection in next four weeks and in order to give them sufficient time to prepare, the test shall be undertaken only after three months of the receipt of applications from the candidates."

4. This Court, without prejudice to the rights and contentions of the parties herein direct the All India Institute of Medical Science to permit the This is a digitally signed order.

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5. The petitioners shall submit their applications on the website www.aiimsexams.ac.in for which purpose the authority concerned in the AIIMS shall activate the website in next one week from today.

6. On the applications being submitted by the petitioners, subject to their meeting the eligibility conditions as per Recruitment Rules (except age) admit cards be given to them to enable them to appear in the examination, to be held on June 03, 2023. To await the outcome of the examination process in respect of the petitioners, list on August 28, 2023.

7. We permit Mr. Bhardwaj to send a copy of this order to Medical Superintendent, Ram Manohar Lohia Hospital and Director, All India Institute of Medical Science for compliance.

8. The Registry shall also separately send a copy of this order to Medical Superintendent, Ram Manohar Lohia Hospital and Director, All India Institute of Medical Science.

9. It is made clear that the participation of the petitioners in the selection process shall subject to the outcome of this writ petition.

V. KAMESWAR RAO, J ANOOP KUMAR MENDIRATTA, J MAY 16, 2023/ds This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 10:08:01