

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

+ **WP(C) No.4657/2010**

% **March 22, 2013**

SMT. MUKESH DEVI AND ORS. Petitioners
Through: Ms. Minal Sehgal, Advocate.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Jatan Singh, CGSC for
respondent No.1.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioners were appointed for different contractual periods as Auxiliary Nurses Midwives. Though the petitioners claim to have been appointed in the year 2000-01 there is no record of this fact and the only record filed on behalf of the petitioners shows that they were appointed in around the year 2007.

2. It could not be disputed on behalf of the petitioners that the petitioners have not been appointed through the regular recruitment process against sanctioned posts or that there were vacancies in the sanctioned posts to which they were appointed. Admittedly the

petitioners themselves state that they were appointed on contractual basis.

3. The Supreme Court in the case of *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1* 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.”

4. In view of the fact that the petitioners were only contractual employees, their contracts already stood terminated, they were not originally appointed against any sanctioned posts or vacancies in the sanctioned posts, the ratio of the judgment of the Supreme Court in the case of *Umadevi (supra)* clearly applies, and therefore they cannot claim regularization and consequential benefits.

5. In view of the above, there is no merit in the writ petition, which is accordingly dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

MARCH 22, 2013

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