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Central Administrative Tribunal
Principal Bench: New Delhi

O.A.No. 194/2002
and
O.A. No. 1741/2002

New Delhi this the 24th day of October, 2002.

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

OA No. 194/2002

1. Ms. Vandana
W/o Shri Roshan Lal
Technical Assistant
DDU Hospital
Harinagar,
New Delhi

R/o F-255, Vikaspuri
New Delhi-110 018.

2. Ms. Poonam Bakshi
W/o Shri Yogi Bakshi
Lab Technician
DDU Hospital
Hari Nagar
New Delhi

R/o B-160 Viswas Park
Uttam Nagar
New Delhi-110 059

3. Shri Ram Parvesh Roy
S/o Shri Bhola Ram
Lab Assistant
DDU Hospital
Harinagar, New Delhi

R/o H-22 Shakurpur
Delhi-110 034

Applicants

(By Advocate: Shri KNR Pillai)

Versus

1. The Govt. of NCT of Delhi
Through
The Secretary (Medical)
Deptt. of Health & Family Welfare,
Delhi Sachivalaya,
IP Estate,
New Delhi-110 002.

2. The Medical Superintendent
DDU Hospital
Hari Nagar
New Delhi-110 064.

Respondents

(By Advocate: Shri Rishi Prakash and
Shri R.K. Dhillon)

OA No. 1741/2002

1. K. Sunil Kumar
S/o Shri Karunakaran
Jr. Radiographer
DDU Hospital
Hari Nagar
New Delhi-110 064.

R/o 10/126, Subhash Nagar,
New Delhi-110 067.

Applicant

(By Advocate: Shri KNR Pillai)

Versus

1. The Govt. of NCT of Delhi
Through
The Secretary (Health)
Dept. of Health & Family Welfare,
Delhi Sachivalaya,
IP Estate,
New Delhi-110 002.
2. The Medical Superintendent,
DDU Hospital
Hari Nagar
New Delhi-110 064.

Respondents

(By Advocate: Shri Rishi Prakash and
Shri R.K. Dhillonb)

ORDER (Oral)

Hon'ble Shri Shankar Raju, Member (J)

As the issue involved in these two OAs is founded on the same set of facts and question of law, they are being disposed of by this common order.

2. Applicants in OA-194/2002 have been appointed as Laboratory Staff in the Din Dayal Upadhyaya Hospital under the Health and Family Welfare Department of the Government of NCT of Delhi on contract basis on a consolidated salary for a period of 89 days which on satisfactory service was extended from time to time with artificial breaks for 89 days. Applicants assail their apprehended termination and have sought accord of pay scale admissible to regular technical and Laboratory staff as well as consideration for

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regular recruitment after age relaxation and direction that they should not be discontinued till replaced by regularly selected incumbents.

3. In OA-1741/2002 applicant is a Junior Radiographer having appointed on a consolidated salary on contract basis for 89 days, he was continued from time to time and assails his proposed termination on 12.7.2002 and has sought identical reliefs as in OA-194/2002.

4. By orders dated 21.3.2002 as well as 9.7.2002 interim directions have been issued not to discontinue the applicants till regularly selected candidates are appointed.

5. Sh. K.N.R. Pillai, learned counsel for the applicants contends that the applicants are fully qualified as per the recruitment rules and as time has taken to regularly fill up the vacancies through the Delhi Subordinate Services Selection Board (DSSSB) the vacancies have been filled up after due selection by a Committee.

6. It is stated that applicants have been continued from time to time on account of their satisfactory service and are now being replaced by ad hoc appointees, which cannot be countenanced in view of the decision of the Apex Court in State of Harvana v. Piara Singh, JT 1992 (5) SC 179. It is further stated that in view of the decision of the Tribunal in Sangita Narang & Ors. v. Delhi Administration, ATR 1988 (1) CAT 556 the harsh terms of contract which the petitioners were forced to accept to obtain employment could not be enforced against them and these terms are to be superseded by the rules framed under

Article 309 of the Constitution of India, in view of the decision of the Apex Court in Roshan Lal Tandon v. Union of India, AIR 1967 SC 1989.

7. Learned counsel further placed reliance on a decision of the Tribunal in Dr. J.P. Paliya & Ors. v. Govt. of NCT of Delhi, decided on 23.4.98 (OA No.2564/97), which has been upheld by the High Court in CWP No.3641/98 on 11.9.98 as well as SLP against it was dismissed on 1.2.99 to contend that the Doctors have been allowed to continue till replaced by regularly selected incumbents and as they had been performing identical work and duties comparable to the regular incumbents they have been allowed the same pay and allowances with effect from the date of their initial engagement.

8. Learned counsel has lastly placed reliance on a decision of the coordinate bench in OA-2435/99 Dr. Adarsh Rani & Ors. v. Union of India, decided on 25.7.2000 wherein reliance has been placed on a decision of the High Court of Delhi dated 11.9.98, which has been upheld by the Apex Court, wherein directions have been issued not to replace the incumbents except by regularly selected persons and they have been accorded the pay and allowances and other service benefits and further directions have been issued to grant age relaxation in case they apply for regular recruitment.

9. Sh. Pillai further placed reliance on a coordinate Bench decision in the case of Laboratory Staff in DDU Hospital in OA-247/2002 Ms. Sethu Surendran & Ors. v. Govt. of NCT of Delhi decided on 11.9.2002, where directions have been issued to consider the claim for

regular selection after according age relaxation till then they should not be replaced by other than regularly selected candidates and payment of salary was accorded as admissible to regular employees.

10. On the other hand, respondents counsel Sh. Rishi Prakash and Sh. R.K. Dhillon rebutted the contentions and stated that the appointments of the applicants were purely on short term basis which would not confer upon them the right of regularisation. The termination has been resorted to after completion of more than five extension and they have been replaced by regularly appointed persons through DSSSB. It is further stated that basic pay plus DA has been paid to the applicants on receipt of attendance and principle of equal pay for equal work is not attracted. This has been done on the basis of the guidelines provided by the cadre controlling authority.

11. We have carefully considered the rival contentions of the parties and perused the material on record. In view of the decisions in Dr. J.P. Paliya's as well as Sangeeta Narang's cases, (supra) affirmed by the Apex Court and in the light of the Constitutional Bench decision in Piara Singh's case (supra) applicants who have been appointed on contract basis and have been performing the work their services cannot be replaced other than the regularly selected candidates. The principles laid down in Sangeeta Narang's case (supra) mutatis mutandis apply to their cases as well. The services of the applicants can be terminated if the same are no longer required or if the authorities are of the opinion that their performance is not upto the mark. This short term contract of service is wholly unconscionable and offends principles of equality

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enshrined under Article 14 of the Constitution of India. Moreover, the applicants possess qualification for the posts and short term appointments were extended from time to time with artificial breaks. No doubt the regularly selected candidates through the DSSSB have a preferential claim over them and if the candidates are available then the applicants have to give way to them.

12. We also find that it is open for the applicants to apply through DSSSB and any other appropriate authority for regular recruitment and in that event age relaxation, as permissible, under the rules and instructions shall be considered for being relaxed by the respondents.

13. In so far as the pay and allowances are concerned, it is not disputed that the applicants are discharging the same identical duties and performing the same work as done by the regularly recruited staff in the Laboratories and other technical staff. On the substantial doctrine of equal pay for equal work, which has gained support from the decisions in Sangeeta Narang's and Dr. J.P. Paliya's cases (supra) they cannot be deprived of the pay and allowances and other service benefits as admissible to regularly recruited staff. Merely because the condition of service prescribe consolidated salary on the basis of attendance and in absence of any factor contrary to the claim of the applicants of performing of identical duties, they cannot be deprived of the regular pay and allowances and other benefits which are admissible to regularly appointed staff. We are fortified in this view by the decision of the coordinate Benches in Sethu Surendran's case (supra) as well as Dr. Adarsh Rani (supra).

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14. In the result and for the reasons recorded above, the OAs are disposed of with the following directions:

- i) The respondents are directed that in the event of appointing candidates on regular basis to the posts of Technical Assistants/Lab Technicians/Lab Assistants and Junior Radiographers, the claim of the applicants herein for the said posts should also be considered. While doing so, their experience of service, already rendered, should be taken into account and proper weightage should be given to the same. Age relaxation may be made as per DoPT guidelines and judicial pronouncements on the subject. Till regular appointments are made, applicants' services should not be terminated.

- ii) The respondents are also directed to make payment of salary as admissible to regular employees in the aforesaid grade to the applicants from the date of their initial engagement within a period of two weeks from the date of receipt of a copy of this order and they would be entitled to future pay on the principle of equal pay for equal work at par with regular employees.

No costs.

Copy of this order be placed in other OA file also.

S. Rajm
(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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