

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH ...

O.A. No. 2179 of 2002

WITH

O.A. No. 2712 of 2002

O.A. No. 43 of 2003

(B)

Now Delhi, this the 11th day of August, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

O.A. 2179 of 2002

1. Ajay Kumar Gulati
S/o Shri M.L. Gulati,
J-1/16, D.D.A. Flats, Kalkaji,
New Delhi-110019.
2. William Bhan
S/o Shri Chander Bhan,
R/o House No.41 A, St. Pauls Church,
Fatehpur Beri, Mehrauli,
New Delhi-110030. ... Applicants

(None for the applicants)

Versus

1. Government of NCT of Delhi,
Through Secretary, Health
Old Secretariat,
Delhi.
2. The Medical Superintendent,
Lok Nayak Jai Prakash Hospital,
New Delhi-110002.
3. Director (Administration),
Lok Nayak Jai Prakash Hospital,
New Delhi-110002. ... Respondents

(By Advocate: Shri Ajesh Luthra)

O.A. No. 2712 of 2002

Mrs. Bitty K. Kuruvila
House No.50-E, A-2, Mayur Vihar, Phase-III,
Delhi-93. ... Applicant

(By Advocate Shri Ashwani Bhardwaj)

Versus

1. The Medical Superintendent
L N J P N Hospital
New Delhi-2.
2. Govt. of N C T D
Through Principal Secretary (Health)
New Secretariat, Indraprastha Estate,
New Delhi-2. ... Respondents

(By Advocate: Shri Ajesh Luthra)

O.A. No.43 of 2003

Shri Manoj Kumar Dubey,
S/o Shri Parmeshwar Dubey,
R/o 142 A, Pocket J & K,
Delhi-110095.

... Applicant

(By Advocate Shri Ashwani Bhardwaj)

Versus

1. Government of NCT of Delhi,
Through Secretary, Health
Old Secretariat,
Delhi.
2. The Medical Superintendent,
Lok Nayak Jai Prakash Hospital,
New Delhi-110002.
3. Director (Administration),
Lok Nayak Jai Prakash Hospital,
New Delhi-110002.

... Respondents

(By Advocate: Shri Ajesh Luthra)

O R D E R

JUSTICE V.S. AGGARWAL

By this common order, the three Original Application Nos. 2179/2002, 2712/2002 and 43/2003 can conveniently be disposed of together. The basic questions involved in all the applications are identical and, therefore, they are being so taken up together.

2. For the sake of convenience, we mention the facts from OA No.2179/2002 (Ajay Kumar Gulati & Anr.v. Government of N.C.T.of Delhi & Ors.).

3. The applicants are working as Laboratory Assistants. In June 1998, the regular paramedical staff working in various Delhi Government hospitals

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had decided to go on indefinite strike paralysing the entire medical services in the Government hospitals. The respondents decided to appoint fresh persons on contract basis and called for applications in this regard. The operative part of the advertisement calling for the applications on contract basis reads:-

"Wanted qualified para medical staff on short term contract basis immediately.

Qualified para medical staff is required on short term contract basis immediately for Delhi Government Hospital on Government approved wages.

The trained para medical personnel, preferably retired from Government Hospitals are requested to attend walk-in-interview in the following four medical institutions of Delhi Government at 10:00 AM on 23.7.1998 along with their original certificates and testimonials:"

The applicants were appointed on contract basis for a period of 89 days on consolidated salary that was mentioned therein.

4. The applicants had filed the original applications which were disposed of on 16.2.2000 by this Tribunal with the following order:-

"we feel that ends of justice will be met by disposing of the present OAs with a direction that in the event of respondents appointing candidates on regular basis the claims of the applicants for the said posts should be considered. While considering the same, their experience of the service already rendered should be taken into account and proper weightage should be given to the same. Similarly age relaxation should also be considered provided they are within the age limit on the date of their initial appointment. Till regular appointments are made, services of the applicants should not be terminated.

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4. It has inter alia been contended on behalf of applicants that their salaries have not been paid since March 1999. This, in our view, is most improper. Applicants should be paid for the work they have already rendered.

5. In the circumstances, we direct the respondents to make payment of the salary due to the applicants within a period of two weeks from the date of receipt of copy of this order. The applicants will be entitled to future pay on the principle of 'equal pay for equal work at par with regular employees with effect from March 2000."

Subsequently they preferred another Original Application No.2263/2001 which was also disposed of on 10.4.2002. This Tribunal had directed that the representations of the applicants should be disposed of by passing a speaking order. It was in pursuance of the past litigation that the respondents passed the impugned order pertaining to Shri Ajay Kumar Gulati and Shri William Bhan applicants in OA No.2179/2002 separately. In the case of Shri Ajay Kumar Gulati, the order rejecting his representation and claim dated 10.8.2001 is in the following words:-

"It has been noticed at later stage that Sh. Ajay Kumar Gulati, appointed as Lab. Asstt. on short term contract basis during strike period of 1998 on emergent basis to keep the life saving services of the hospital alive, does not hold the requisite qualification from a recognised institution.

As per the statement of All India Council of Technical Education furnished in the High Court of Delhi in a Public Interest Litigation filed by common cause, a non-government organisation, the MLT course run by Safdarjung Hospital is not recognised course. Hence in view of the above Sh. A.K. Gulati, Lab. Asstt. becomes ineligible to continue as a Lab. Asstt. in this hospital as the diploma in MLT possessed by him has been issued by Safdarjung Hospital. The Recruitment Rules for the ibid post clearly mentions that the MLT should have been done from a recognised institution only.

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Now therefore, Sh. A.K. Gulati, Lab. Asstt. is hereby directed to furnish his submissions/versions in the matter within a week's time positively." (F)

In the case of Shri William Bhan, the representation was also rejected primarily on the ground that the diploma in Medical Laboratory Technology (MLT) from the Institute of Public Health & Hygiene, Delhi is not from a recognised institution.

5. By virtue of the present application, it has been claimed by all the applicants that their services have been terminated. The orders so passed are illegal. The respondents should regularise their services with consequential benefits. According to the applicants they are qualified Laboratory Assistants. In OA No.2179/2002, it is claimed that they had obtained the required certificate/diploma from institutions run by the Government. They do not require any recognition from the All India Council for Technical Education (for short, "AICTE") which is only meant for private institutions. In any case, the diplomas obtained by them were duly recognised and they should not be de-recognised on the whims and fancies of the respondents. So far applicant Shri Ajay Kumar Gulati is concerned, he had obtained a certificate course medical laboratory technology (M.L.T.) from the Ministry of Health and Family Welfare which was run by the Safdarjung Hospital. Applicant No.2 Shri William Bhan has a similar certificate from the Institute of Public Health and Hygiene. It is in this back-drop that the present application has been filed.

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6. Suffice to mention that in OA No.43/2003 filed by Manoj Kumar Dubey, he had done M.L.T. as a vocational course in Intermediate while in OA No.2712/2002 filed by Mrs.Bitty K.Kuruvilla, the diploma had been obtained in 1994. - - - - -

7. In the reply filed, the applications have been contested. It is admitted that the applicants were appointed as Laboratory Assistants on short term contract basis during the strike of the employees in the year 1998. Their services were disengaged in June 2002. It is reiterated that the applicants did not possess the required certificate from the recognised institutions. Applicant Shri Ajay Kumar Gulati is stated to have obtained the diploma from Safdarjung Hospital. The Deputy Education Officer of the Government of India, Department of Education has stated that the Board of Assessment for education qualifications has not recognised the certificate for the purpose of employment. The litigation was pending in the Delhi High Court i.e. Civil Writ Petition No.3018/2000 titled as Common cause H.D.Shourie v. Union of India and Others. It was disposed of on 8.1.2002 and it observed that the Directorate General of Health Services had closed the said course from the academic year and the new course was only to be started as per the guide-lines of AICTE. As regards Shri William Bhan, it is stated that the diploma from the Institute of Public Health and Hygiene is also not

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recognised. It is not the affiliated institution of the Board of Technical Education, Delhi.

8. An additional affidavit even was filed on behalf of the respondents pointing out that on basis of the examination held by the Department of Health and Family Welfare, regular Laboratory Assistants had become available in the Lok Nayak Hospital and there is no need for the short term contract Laboratory Assistants.

9. During the course of submissions, our attention had been drawn towards a letter from the Government of Delhi, Board of Technical Education addressed to the Medical Superintendent, Lok Nayak Hospital dated 13.7.2000. It refers to the fact that the institutes affiliated to the Board of Technical Education for diploma course in Medical Laboratory Technology are Meerabai Polytechnic, Maharani Bagh, New Delhi (Government Polytechnic) and Aditya Institute of Technology, Vasant Kunj and Baba Hari Das College of Pharmacy & Technology, Najaf Garh (privately managed affiliated institutes).

10. So far as OA No.2712/2002 filed by Mrs. Bitty K. Kuruvilla is concerned, though at the time of the arguments, none had appeared on behalf of the applicant, but perusal of the record reveals that she had obtained diploma in M.L.T. from J.H. Pathological

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Laboratory, Kuttoor, Kerala which was not recognised in the year 1994 when the same was obtained. Subsequent recognition will not improve upon an invalid or irregular diploma and, therefore, the claim of the applicant in OA No.2712/2002 must be said to be without any merit.

11. In OA No.43/2003 filed by Manoj Kumar Dubey, he had a certificate of M.L.T. as vocational course in Intermediate. This is not a regular diploma obtained from a recognised institution. At this stage, it would be worthwhile to mention that the recruitment rules for the said post, prescribe the following educational qualifications:-

"Educational & other qualifications required for direct recruits:-

- 1) Matriculation/Hr. Secondary/Sr. Secondary (10+2) with science.
- 2) Diploma in Medical Laboratory Techniques from a recognised Institution."

Shri Manoj Kumar Dubey did not have diploma in M.L.T from a recognised institution and merely doing a vocational course while passing 10+2 examination/Intermediate will not improve upon his qualifications to make him eligible.

12. The learned counsel for the applicants in OA No.2179/2002 had vehemently contended that in the

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publication of 1993 pertaining to "Courses in Architecture- Planning Engineering & Medical-Para-Medical", it has been shown that the Institute of Public ~~Health~~ and Hygiene and Deptt. of Clinical Pathology, Safdarjung Hospital are recognised. He was indirectly drawing our attention to the fact that the respondents are now estopped from contending that the said institutions in fact were not recognised.

13. We know from the decision of the Supreme Court in the case of **M/s. Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh and Others**, (1979) 2 SCC 409 that the doctrine of promissory estoppel is applicable where the Government makes a promise knowing or intending that it would be acted on by the promisee and thereafter, the Government alters this position. The Supreme Court held:-

"24. This Court finally, after referring to the decision in the **Ganges Manufacturing Co. v. Sourujmull** (supra), **Municipal Corporation of the City of Bombay v. Secretary of State for India** (supra) and **Collector of Bombay v. Municipal Corporation of the City of Bombay** (supra) summed up the position as follows:-

Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte

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appraisement of the circumstances in which the obligation has arisen.

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or law, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"?"

In identical terms was the decision rendered in the case of **Shrijee Sales Corporation and Another v. Union of India**, (1997) 3 SCC 398. Herein the Supreme Court concluded:-

"even where there is no such overriding public interest, it may still be within the competence of the Government to resile from the promise on giving reasonable notice which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position, provided, of course, it is possible for the promisee to restore the status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable."

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14. In the present case in hand, the question of resiling from the promise does not arise. We have already referred to above, the recruitment rules for the post. The candidates must have a diploma or a certificate from a recognised institution. If as a result of public interest litigation, as indicated above, in the Delhi High Court, a certificate or course run by the Safdarjung Hospital has been de-recognised, it is not that the Government has not adhered to the promise. It is a judicial verdict in pursuance of an affidavit that had been filed. Identical is the position in the case of applicant No.2 in OA No.2179/2002. Once the course is not recognised even if there was any such fact mentioned in the prospectus of the year 1998, it will not improve upon the applicant's position nor the principle of promissory estoppel can be attracted in the facts of the present case.

15. Otherwise also all these courses have no recognition from the AICTE. The AICTE has been established by an Act of Parliament (Act 52 of 1987) with a view to the proper planning and co-ordinated development of the Technical Education system throughout the country. The preamble to the Act states that the same has been enacted for proper planning and co-ordinated development of technical education. It has been enacted for promotion of qualitative improvement of such education in relation

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to planned quantitative growth. Section 3 of the Act gives powers to the Central Government to establish a Council and makes recommendations in this regard. The Supreme Court in the case of State of Tamil Nadu & Anr. etc.etc. v. Adhiyaman Educational & Research Institute & Ors. etc. etc., JT 1995 (3) S.C.136 has categorically held in this regard. Even in the case of Medical Council of India v. State of Karnataka & Ors., (1998) 6 SCC 131 and State of Tamil Nadu & Anr. v. Adhiyaman Educational and Research Institute & Ors., (1995) 4 SCC 104 where similar provisions existed and similar powers were available with the Medical Council of India, it has been held that the decision pertaining to qualifications prescribed are binding. Therefore, AICTE certainly can decide about the recognition of the institutions and prescribing the same. Once these institutions did not have the required signal from the AICTE, the plea of the applicants in this regard must fail. It cannot be taken that they had the prescribed qualifications or therefore, could seek regularisation in this regard.

16. We take note of the fact that it is unfortunate that the Government publication has so indicated in the year 1993 and this has misled the applicants in OA No.2179/2002. Rights propagated that they were recognised institutions. Thus in the form of lesser relief because the applicants in OA No.2179/2002 must have spent certain amount for



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acquiring the diplomas from the aforesaid institutions which now are turned to be not recognised, we award Rs.10,000/- to each of them.

17. For these reasons, we dismiss the applications subject to award of Rs.10,000/- (Ten Thousand) only to applicants in OA No.2179/2002. No costs.

(S.K.Naik)
MEMBER (A)

(V.S.Agarwal)
CHAIRMAN

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