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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 32/2002

M.A. NO. 39/2002

M.A. NO. 40/2002

New Delhi this the 17th day of January, 2003.

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN

HON'BLE SHRI V.SRIKANTAN, MEMBER (A)

1. Sunil Bist
S/o Shri K.S.Bist
Lecturer, Digital Electronics
Guru Nanak Dev Polytechnic
Delhi.
R/o 1449, Gulabi Bagh
Delhi-110 007.
2. Sanjeev Lochan Gupta
S/o Shri V.P.Gupta
Lecturer, Automobile Engineering
Pusa Polytechnic, Pusa
R/o WZ 229-B, Inderpuri
New Delhi.
3. Chander Kumar Senapati
S/o Shri G.P.Senapati
Lecturer, Industrial Engineering
Aryabhat Polytechnic, Delhi.
R/o E-3, Kaveri
IGNOU
Maidan Garhi
New Delhi-110 068.
4. Tarvinder Rana
S/o Shri B.S.Rana
Lecturer, Civil Engineering
G.N.D.Polytechnic, Delhi
R/o 560, Pana Begwan
Village Bawana, Bawana
Delhi-110 039.
5. Ram Vinod Singh
S/o Shri J.N.Singh
Lecturer, Civil Engineering
G.N.D. Polytechnic, Delhi.
R/o D-14/83, Sector-III
Rohini, Delhi.
6. Manish Kumar
S/o Shri (Dr) Rajvir Singh
Lecturer, Automobile Engineering
Pusa Polytechnic, Delhi.
R/o 4, Ramakrishna Colony
Model Town
Ghaziabad.

7. Dharanjeet Singh
 S/o Shri Dalbir Singh
 Lecturer, Automobile Engineering
 Pusa Polytechnic, Delhi.
 R/o 372(411), St. No. 2
 Subhash Nagar
 Meerut.

..... Applicants

(By Shri K.N.R.Pillai, Advocate)

-versus-

Govt. of NCT of Delhi
 Through
 The Director-cum-Secretary
 Directorate of Training &
 Technical Education
 Muni Maya Ram Marg
 Pitampura
 Delhi-110 034.

... Respondents

(By Shri George Paracken, Advocate)

O R D E R

Justice V.S. Aggarwal:-

MA No. 40/2002

MA No. 40/2002 for joining together in OA
 No. 23/2002 is granted.

OA No. 32/2002

The applicants had been employed/recruited by the Government of National Capital Territory of Delhi in the Department of Training and Technical Education as Lecturers in various Polytechnics established by the respondents. By virtue of the present application, they seek a direction that from the date of their first appointment, they should be granted the same pay scale and allowances

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and the same benefit of leave and other service conditions as are applicable to Lecturers appointed on regular basis and they should be continued in service without any break till regular appointments are made. When regular recruits become available, the applicants should be first posted in the vacant posts and only after the vacant posts are filled up, the applicants as such should be replaced.

2. The applicants contend that the posts of Lecturers in different Polytechnics are Group 'A' Gazetted posts, regular appointments to which has to be made after consulting the Union Public Service Commission. Since the recruitment process through the Union Public Service Commission takes a long time and all the selected candidates do not join the service, there are a large number of vacant posts that remain unfilled. The respondents advertised the vacancies and the selection was effected initially for a period of one year which could be extended from time to time by six months till the vacancies are filled up by the Union Public Service Commission. The terms of appointment are harsh and the applicants are denied the pay scale of Rs.8000-13,500/- and they are being given only a consolidated amount of Rs.8000/- without any Dearness Allowance, House Rent Allowance etc. which are paid to the regular Lecturers. The respondents have exploited the

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situation of unemployment prevalent in the country by recruiting the applicants on ad hoc basis on a consolidated salary. The ad hoc appointments had been continuing for a long time and these appointments, therefore, on ad hoc basis, according to the applicants, should be allowed to continue till regularly appointed persons are recruited. Hence the abovesaid reliefs are being claimed.

3. In the reply filed, it has been pointed that the applicants were appointed on certain terms and conditions on a consolidated salary. It was made clear that the said appointment would be for a period of one year or till the post is filled on regular basis through the Union Public Service Commission whichever is earlier. It is slated in the said terms and conditions that the appointment could be terminated by giving one month's notice or giving one month's salary without assigning any reason. It was mentioned that this appointment will not grant any right for claiming the same on regular basis.

4. The respondents admitted that the posts of Lecturer belong to Group 'A' and for these posts recruitment is made on the basis of selection made through the Union Public Service Commission. The respondents themselves are not competent to recruit the Lecturers. The applicants are free to compete

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with the other candidates through the Union Public Service Commission. Most of the vacant posts for which the Lecturers were appointed on contract basis have since been filled up by selection having been effected by the Union Public Service Commission.

5. It is denied by the respondents that the terms of appointment are not harsh. The applicants cannot compare themselves with regular Lecturers. It is further denied that the applicants are discharging the same functions and duties as performed by regularly appointed Lecturers. As per the respondents, the applicants were engaged on ad hoc basis. They cannot be given the charge of costly equipments. They cannot be associated with the Government purchases. They are not declared as Drawing and Disbursing Officers. They are not given any work of statutory nature. Accordingly, the pleas raised by the applicants have been controverted.

6. Along with the application, Misc. Application 39/2002 has been filed seeking condonation of delay in filing of the application. The applicants pray that they had submitted representations for grant of pay and allowances as applicable to regular Lecturers. The representations had been rejected on 25.5.2000.

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The applicants contend that in the Union Public Service Commission's advertisement, the words "First Class Engineering Degree" to be necessary qualification were missing. The applicants were feeling that there was very little hope of their being selected on regular basis and, therefore, they preferred the present application.

7. Whenever an application is filed seeking condonation of delay, indeed, there cannot be any hard and fast rule. There is no straight-jacket formula that could be applied. The facts and circumstances of each case necessarily have to be taken note of. The applicants explained the reason referred to above as changes that had been brought about in the advertisement that had appeared for recruitment through the Union Public Service Commission. The applicants, therefore, lost the hope and in the peculiar facts, the right which otherwise in the facts of the present case is a continuous one, cannot be defeated. Accordingly, we condone the delay.

8. So far as, the prayer for regularisation of the applicants is concerned though pressed, necessarily must be rejected. Reasons are obvious. Admittedly the posts on which the applicants are presently working on contract basis are Class I posts. The same have to be filled up in terms of



the recruitment rules through the Union Public Service Commission. The appointments of the applicants had not been effected strictly in accordance with the recruitment rules. Therefore, the regularisation of such persons cannot be effected de-hors the rules.

9. Thereupon, it has been insisted that the applicants are discharging the same duties and functions as other regularly appointed Lecturers but they are being paid less. Therefore, the applicants on the basis of the principle of 'equal pay for equal work' are entitled to the same pay. Only difference in this regard pointed pertaining to the duties of the applicants on behalf of the respondents was that they cannot be given the charge of costly instruments and equipments. They cannot be associated with Government purchases and they are not declared as Drawing and Disbursing Officers. These are certain ancillary duties which can be given to any person. The applicants are Lecturers and are doing similar duties pertaining to the teaching which is their primary function like the regularly appointed persons. Consequently it must be held that the applicants are discharging the same duties as regularly appointed persons.

10. All the same, the learned counsel for the respondents contended that the Delhi High Court in

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the case of Hari Bhushan and Others v. Govt. of NCT

of Delhi in Civil Writ Petition No. 7345/2000

decided on 30.1.2001 had dismissed the petition of

the similarly situated persons who were claiming similar pay scale as was being paid to regularly appointed employees. The findings of the High

Court read:-

"The aforesaid submissions are quite contrary to the terms and conditions of the appointment letters which were issued to the petitioners. The said terms and conditions were accepted by the petitioners without any protest. Now they cannot be allowed to resile from their earlier action in accepting the consolidated salary in terms of the condition of appointment and claim a pay structure as that of a regular employee even before expiry of their tenure of appointment. Besides when the regular norms of appointment to the post of Lecturer is through the UPSC, no direction can be issued to the respondents to regularise the services of the petitioners without going through the process of selection by the UPSC."

In the normal circumstances, we would not have any hesitation in accepting the findings of the Delhi High Court in this regard but what cannot be ignored is the well-settled and recognised principle that the law laid down by the Supreme Court binds us. When our attention has been drawn to certain decisions of the Supreme Court and a Larger Bench of the Delhi High Court, in that event we would have no option but to follow the decisions of the Apex Court and the Larger Bench of the Delhi High Court.



11. In the case of Dr. (Mrs.) Sangita Narang and Ors. v. Delhi Administration, Etc., (1988) 6 ATC 405, a Full Bench of this Tribunal held that when they are discharging similar functions, necessarily they would be entitled to the same pay.

It was held further:-

"The terms and conditions laid down in the appointment letters issued to the petitioners are surely unfair, arbitrary and harsh. Obviously the petitioners, have accepted the same because they had no choice but to accept the posts or decline them and remain unemployed: the employment position in the country being what it is with ever growing spectre of unemployment looming large. Hence, we quash the impugned orders in all these applications and hold that all the Junior Medical Officers, Grade II appointed purely on ad hoc basis would be entitled to the same pay scale of Rs. 700-1300 and allowances as also the same benefits of leave, maternity leave increment on completion of one year and other benefits of service conditions as are admissible to the Junior Medical Officers appointed on regular basis in the pay scale of Rs. 700-1300. Further, notwithstanding the break of one or two days in their service as stipulated in their appointment letters, etc, they shall be deemed to have continued in service ever since the day of their first appointment."

It is not in controversy that the aforesaid decision of this Tribunal had been upheld by the Supreme Court.

12. A Division Bench of the Delhi High Court in the case of Government of National Capital Territory of Delhi and Others v. Dr. V. S. Chauhan in Civil Writ Petition No. 3641/1998 decided on



11.9.1998 was dealing with a similar question and it had negatived the similar plea as is being offered by the respondents by concluding:-

"9. The present writ petition by the petitioner is aimed at depriving the respondents of their legitimate emoluments and dues. Rather, acting as a model employer, the Government is attempting to take unfair advantage of the situation prevalent in the country on account of large scale unemployment. It is not the case of the petitioner that the services rendered by the respondents are in any manner inferior to the services rendered by the regularly employed doctors. The respondent doctors took up employment on contractual basis for short term on account of force of circumstances and should not be made to suffer on this account. The stand taken by the petitioners apart from being legally untenable, is unfair, unreasonable, arbitrary and unjust. The writ petitions are, accordingly, dismissed with costs quantified at Rs.2,000/- for each petition."

The Supreme Court in the case of **Union of India and Ors. v. Arun Kumar Roy**, AIR 1986 SC 737 has also taken the same view. Resultantly, we have no hesitation in rejecting the contention of the respondents and accepting that of the applicants.

13. Immediately the question that comes up for consideration is as to from which date, if any, the arrears would be paid to the applicants as are being paid to the regular employees. The applicants claim the same from the date of their initial appointment.



14. That would not be permissible. Having delayed the action and acting on the contract, it would be impermissible to claim the arrears. The relief necessarily, therefore, has to be modified and it is directed that the applicants would be entitled to the arrears of a regularly paid employee at the minimum of the time scale from the date of the filing of this application in the peculiar facts of this case.

15. It has further been argued that the applicants had been serving the department and there are a large number of posts that are lying vacant and, therefore, the services of the applicants cannot be dispensed with. The main plea offered on behalf of the respondents in this regard was that the applicants cannot be allowed to continue because the respondents had already through the Union Public Service Commission advertised certain posts and selection had been made. According to the learned counsel for the respondents, the selected persons having joined, the applicants' services are not required.

16. At the outset, we may mention that during the course of submissions, it was not disputed that so far as the posts of Lecturer, Digital

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Electronics are concerned, two persons have already been recruited and the posts had been filled up. In that view of the matter, the claim of Shri Sunil Bist, applicant No.1 that he should be allowed to continue must fail and is rejected. This is for the reason that only two posts have been stated to have fallen vacant which have since been filled up.

17. Similarly the post of Lecturer, Industrial Engineering on which Shri Chander Kumar Senapati is working, has since been abolished and no such course now is in force which is also admitted on behalf of the applicants. When it is so, the claim of Shri Chander Kumar Senapati, applicant No.3 indeed for continuing will not survive and the application must fail as far as he is concerned.

18. The controversy, however, pertaining to the applicants was with respect to the posts of Lecturer, Automobile Engineering. The admitted case was that 13 posts were advertised through the Union Public Service Commission and 8 persons had joined. The plea of the respondents that they can manage and run the institutes with 8 persons who have joined must be described to be mala fide. This is for the reasons that they admittedly had re-advertised the remaining 5 posts through the

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Union Public Service Commission. That clearly reveals that they require the services of 5 more persons. Otherwise no occasion for re-advertising the same would have arisen. Applicants, Sanjeev Lochan Gupta, Manish Kumar and Dharamveer Singh, Nos. 2, 6 and 7 respectively are working on contract basis as Lecturers, Automobile Engineering. Consequently it is directed that till such time the regularly employed Lecturers, Automobile Engineering are appointed, the applicants No. 2, 6 and 7 should be allowed to continue.

19. Similar is the position with respect to the posts of Lecturer, Civil Engineering. Applicants No. 4 and 5, Tarvinder Rana and Ram Vinod Singh are the two persons who claim that they should be allowed to so continue. There were 7 vacancies that were advertised and 4 of them have joined. Necessarily both the applicants can continue till such time regularly appointed persons join.

20. Resultantly, we dispose of the present application with the following directions:-

- (a) The applicants would be entitled to the pay scale of the regularly appointed Lecturers. However, they would be paid the minimum of the scale of the post of Lecturer. The arrears would only be confined to the date of filing of this application.

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(b) The application in respect of Shri Sunil Bist, applicant No.1 and Shri Chander Kumar Senapati, applicant No.3 is dismissed.

(c) Other applicants would continue till such time regularly appointed Lecturers in accordance with the recruitment rules join the posts against the discipline with which they were working.

No costs.


(V. Srikantan)

Member (A)


(V.S. Aggarwal)

Chairman

/sns/