

**CENTRAL ADMINISTRATIVE TRIBUNAL****CHANDIGARH BENCH****O.A. No.060/00881/2016**Chandigarh, this the 18th February, 2020

(Orders reserved on: 29.01.2020)

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. NAINI JAYASEELAN, MEMBER (A)

Harpreet Singh son of Devinder Singh, aged 30 years,
 House No. 301, Phase I, BDC, Sector 26, Chandigarh

....Applicant

(BY: MR. KSHITIJ SHARMA, ADVOCATE)

Versus

1. U.T. Administration through its Home Secretary, U.T. Secretariat, Sector 9, Chandigarh.
2. Director Principal Govt. Med. College and Hospital Chandigarh, Sector 32-B, Chandigarh.

... .Respondents

(BY: MR. G.S. SANDHU, ADVOCATE)

ORDER
SANJEEV KAUSHIK, MEMBER (J):

1. Applicant approached this Tribunal by way of filing the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, for issuance of a direction to the respondents to consider his candidature for the post of Mortuary Supervisor Grade-I, by granting him the benefit of age relaxation in view of service rendered by him on contract basis with the respondents department.



2. Before noticing the arguments raised by the learned counsel for the parties, we would recapitulate the facts which led to the filing the present O.A.

3. Applicant was working as Junior Laboratory Technician in the department of Microbiology with Respondent No. 2 since 18.11.2008 and remained as such till 20.11.2013. In the meantime, Respondent No. 2 issued an advertisement on 05.07.2013, notifying one post of Mortuary Supervisor, against which applicant, being eligible, applied and he was called for interview on 29.09.2014. He was offered appointment as Mortuary Supervisor/Senior Technician Grade-I on 07.11.2014, purely on contract basis. Subsequently, they issued another advertisement notice on 11.08.2016 inviting applications for appointment against various posts including one post of Mortuary Supervisor Grade- I. Applicant who was otherwise eligible in terms of qualification applied for the post. However the age prescribed as per the advertisement was 18-30 years and he was over age only by 10 days. Applicant then submitted an application for relaxation of age on the plea that since he has been working with the respondent department on contractual basis as Mortuary Supervisor, which has now been re-advertised for appointment on regular basis, therefore he be given age relaxation by considering number of years he worked with the respondent department. Having



failed to get any positive response from them, the applicant approached this Tribunal by filing the present O.A.

4. Mr. Kshitij Sharma, learned counsel for the applicant vehemently argued in support of above contention that the action of the respondents in not considering the case of the applicant for age relaxation by granting weightage of the service rendered by him with the respondent department, is illegal, arbitrary and against the judicial pronouncements. To buttress his plea, learned counsel placed reliance upon judgment of the Hon'ble Jurisdictional High Court in the case of **Sneh Lata Vs. Municipal Corporation**, 2011 SCC Online P & H 3861, and judgment reported as 2017 (2) SCT 734 upholding the decision of this Court in the case of **Sunita Sharma Vs. UPSC & Others**.

5. Respondents, while filing written statement, contested the claim of the applicant and submitted that since the applicant was over-age at the time of submission of application, therefore, he cannot be given age relaxation by giving weightage of the service rendered by him on contractual basis with them.

6. In support of the above plea, Mr. G.S. Sandhu, learned counsel for the respondents, placed reliance upon judgment in the case of **UPSC Vs. Girish Jayanti Lal Vaghela & Others**, 2006 (1) SCT 621.



7. We have heard learned counsel for the parties at considerable length.

8. This Court, at the first instance, allowed the applicant to participate in the selection process subject to the outcome of this O.A., vide order dated 26.09.2016. On a subsequent date, the O.A. was disposed of as infructuous, on a statement made by learned counsel for the respondents that the applicant has been allowed to participate in the selection process after considering him eligible as per the eligibility criteria. Later on, an application was filed for modification of the order to the effect that though the applicant was allowed to participate provisionally in the selection process but his eligibility has not been settled by this Court, therefore, the matter be decided on merits. The O.A. was then restored.

9. We have given our thoughtful consideration to the matter.

10. The issue of granting age relaxation to contractual employee/daily wager has been considered by this Court in a bunch of cases with leading case titled **Meeta Kaushik & Others Vs. UPSC & Others**, (O.A. No. 857/CH/2013 decided on 20.02.2015) wherein this Court found favour with the plea made by the applicants therein and directed the respondents to grant them age relaxation for the number of years they worked with them on contractual



basis. Dissatisfied with the order of this Court, the respondent UPSC approached the Jurisdictional High Court by filing a bunch of Writ Petitions with leading one No.12069 of 2015 titled **Sunita Sharma & Others Vs. UPSC & Others** (supra), which were dismissed vide order dated 06.02.2017 whereby the order of this Court was upheld while giving a categoric finding in para 22 thereof, on the basis of various judgments on similar issue including one by the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and Others Vs. Uma Devi**, (2006) 4 SCC 1.

The relevant para is quoted herein below:-

"(22) Applying the above summarized principles to the facts and circumstances of the cases in hand, we are satisfied that no interference with the order(s) passed by the Tribunal is called for. We say so for the reasons that firstly, most of the respondents are working on ad hoc/contract basis for the last 10/12 years. Their contractual employments are not protected under any Court order rather they have been allowed to continue as such by the Chandigarh Administration at its own. Secondly, there is nothing on record to suggest that there were Recruitment Rules formulated by Chandigarh Administration at the time when the private respondents were appointed on ad hoc/contract basis. These Rules were notified in the year 2011, namely, much after the appointment of private respondents. Thirdly, the respondents were appointed in conformity with Articles 14&16 of the Constitution, through an open competition and by inviting applications by way of public advertisements. The 12 of 14 appointment of none of them can be termed as a back-door entry. Fourthly, it has come on record from the averments made in preliminary submissions No.(2) of the written statement filed by the Chandigarh Administration before the Tribunal that requisition for filling up some of the posts of Lecturer (including one post of Lecturer/Assistant Professor in Dance) was sent to UPSC in the year 2003 but the Commission returned the requisition on 13.01.2004 asking the administration to modify its Recruitment Rules and bring them in conformity with the UGC Regulations as notified on 31.07.2002. The Chandigarh Administration took more than 8 years in notifying the new Recruitment Rules of 2011 and 10 years in sending fresh requisition to the Commission. The red-tapism in the Chandigarh Administration has led to complete denial of even a single opportunity to the private respondents to compete for regular selection. Thus, it will be wholly unjust and iniquitous to say that the private



respondents cannot show their worth for regular appointment even once in their life time because they have become overage due to the inordinate delay not attributable to them at all. Sixthly, the Government of India also needs to re-visit its administrative decision of restricting the benefit of age relaxation only in favour of regular employees. Ordinarily, a person who is in regular employment might not be keen to compete for yet another regular post save where the post occupied by him/her is of a lower status. On the other hand, the ad hoc/temporary employees who have been appointed through public advertisement or Employment Exchange would always be eager to compete for regular selection for the security of tenure. If such employees are deprived of the opportunity to compete at the whims and fancies of the authorities, it will be travesty of justice and denial of equal 13 of 14 opportunity to compete for public employment and would thus be hit by Articles 14 & 16 of the Constitution unless the tearing effect of discrimination is wiped out by granting age relaxation to them."

11. Not only this, the Hon'ble High Court has also considered judgment in the case of Girish Jayanti Lal Vaghela (supra), relied upon by the respondents and finding has been recorded in paras 15 and 16 of the judgment which is reproduced as under:-

"(13) Since UPSC's claim rests entirely upon the decision rendered in Girish Jayanti Lal Vaghela, it is necessary to make a detailed reference to the facts and the principles laid down in that decision.

(14) Girish Jayanti Lal Vaghela was appointed as Drugs Inspector on short-term contract basis for a period of six months from the date of joining or till the date the candidates selected by UPSC joined duty on regular basis whichever was earlier. His appointment was renewed after every six months with short breaks and it continued for over five years. UPSC advertised the posts of Drugs Inspector for regular selection on 24.03.2001. The Recruitment Rules framed under proviso to Article 309 of the Constitution prescribed upper age limit of 30 years for a direct recruit, which was relaxable for the Government servants upto five years in accordance with the instructions/orders issued by the Central Government. Girish Jayanti Lal Vaghela had become overage by two years at the time when the advertisement was issued and consequently he claimed age relaxation. Since there was no response, he firstly approached the Central Administrative Tribunal and then the Bombay High Court which allowed his writ petition and directed to issue age relaxation certificate with a further direction to UPSC to consider his claim for selection to 7 of 14 the post of Drugs Inspector. It was in this background that Hon'ble Supreme Court firstly considered the question of employer-employee relationship and explored the true meaning of the expression "contract of service" and "contract for service". After discussing the case-law, the Apex Court concluded that employment under the



Government is a matter of status and not a 'contract' even though acquisition of such status may be preceded by a contract, namely, offer of appointment which is accepted by the employee. However, once the appointment is made, the rights and obligations are not determined by contract between the two parties but by Statutory Rules which are framed by the Government in exercise of powers conferred by Article 309 of the Constitution.

(15) Thereafter their Lordships examined the nature of appointment of Girish Jayanti Lal Vaghela who was engaged on contract basis and found as follows:-

"17. It is neither pleaded nor there is any material to show that the appointment of respondent no.1 had been made after issuing public advertisement or the body authorized under the relevant rules governing the conditions of service of Drugs Inspectors in the Union Territory of Daman and Diu had selected him. His contractual appointment for six months was de hors the rules. The appointment was not made in a manner which could even remotely be said to be compliant of Article 16 of the Constitution. The appointment being purely contractual, the stage of acquiring the status of a Government servant had not arrived. While working as a contractual employee respondent no.1 was not governed by 8 of 14 the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was entitled to any pension which are normal incidents of a Government service. Similarly he could neither be placed under suspension entitling him to a suspension allowance nor he could be transferred. Some of the minor penalties which can be inflicted on a Government servant while they continue to be in Government service could not be imposed upon him nor he was entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that respondent no.1 was a Government servant."

(16) It may be seen from the above-reproduced conclusion drawn by the Supreme Court that the writ petitioner in the cited case was held not to be a Government servant as his appointment was neither made after issuing public advertisement nor in accordance with the relevant rules governing the conditions of service of Drugs Inspector. His contractual appointment was found to be de hors the Rules. Since he was not held to be a Government servant, the Apex Court further ruled that he was not entitled to seek age relaxation."

12 Besides that, in the case of **Geetika Vs. Union of India & Others** (O.A. No. 1064/CH/2013), similar issue was raised before this Court and the contesting respondent Chandigarh Administration made a statement based upon instructions from the concerned quarters that they have decided to grant age relaxation for the period the



contractual employees have actually worked with the respondent departments subject to maximum of five years.

On his statement, the O.A. was disposed of vide order dated 25.03.2014, which is reproduced here under:-

"1. Sh. Aseem Rai, learned counsel for the respondents has produced a photocopy of minutes of the meeting held on 29.11.2013, which is taken on record and a copy thereof has been handed over to the counsel opposite.

2. Mr. Aseem Rai, learned counsel for the respondents submitted that the present O.A. may be disposed of as having been rendered infructuous, as a decision has been taken by the respondents in the minutes of the meeting held on 29.11.2013, for grant of age relaxation for the period, the contractual employees have actually worked in their respective Departments of UT Chandigarh subject to maximum of five years, whichever is less."

13. In view of the above, we are left with no other option but to accept the present O.A. and direct the respondents to consider the claim of the applicant for grant of age relaxation by giving weightage of service rendered by him with them, for appointment to the post of Mortuary Supervisor. No costs.

(NAINI JAYASEELAN)
MEMBER (A)

(SANJEEV KAUSHIK)
Member (J)

Place: Chandigarh
Dated:18.02.2020

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