

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Applications Nos.200/481/2019, 200/482/2019 &**
200/483/2019Jabalpur, this Wednesday, the 30th day of December, 2020**HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Dr. Shakti Singh Parihar, S/o Shri Arun Singh Parihar, age about 36 years, Occupation : Medical Officer (Ayurveda), AIIMS Bhopal, R/o Flat No.2003, Type II Apartment, AIIMS Residential Campus, Saket Nagar, Bhopal.

-Applicant in OA 200/481/2019

Dr. Ajay Singh Baghel, S/o Shri Bhola Singh, age about 38 years, Occupation : Medical Officer (Homeopathy), All India Institute of Medical Sciences, Bhopal 462020, R/o House No. 113, Sector 5, Global Park City, Katara Hills, Bhopal.

-Applicant in OA 200/482/2019

Dr. Amit Kumar Verma, age 39 yrs, S/o K.L. Verma, Occupation : Medical Officer (Homeopathy), All India Institute of Medical Sciences, Bhopal 462020, R/o 2011, Type II Apartment AIIMS, Residential Campus, Saket Nagar, Bhopal

-Applicant in OA 200/483/2019**(By Advocate – Shri N.S. Ruprah through Video Conferencing)****V e r s u s**

1. All India Institute of Medical Sciences, Saket Nagar, Bhopal 462020 through its Director.

2. Deputy Director (Administration), All India Institute of Medical Sciences, Saket Nagar, Bhopal 462020.



3. Union of India through the Secretary, Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi – 110011.

4. Deleted.

- Common Respondents

**(By Advocate – Smt. Kanak Gaharwar along with Shri Gopi Chourasia
through Video Conferencing)**

(Date of reserving order : 23.09.2020)



ORDER

By Ramesh Singh Thakur, JM.

The applicants are Medical Officers working in different medical fields viz; Ayurveda/Homeopathy in All India Institute of Medical Sciences (in short 'AIIMS') Bhopal on contractual basis. The applicants are aggrieved by the order dated 27.05.2019 (Annexure A-1), whereby services of the applicants have been terminated with immediate effect. Since the issue involved in all these Original Applications is similar in nature, therefore, they are being adjudicated through a common order. For the purpose of this order, the facts are being taken from OA 200/482/2019 unless specifically mentioned otherwise.

2. The applicant has sought for the following reliefs:

“8.1 To quash the impugned order dated 27.05.2019, Annexure A-1;

- 8.2 *To direct the respondents to continue the applicant in service;*
 8.3 *To pass such other orders as it may deem fit under the circumstances of the case.”*

3. Brief facts of the case are that the applicant was appointed as Medical Officer (Ayurved) on contractual basis for a period of 11 months vide order dated 14.08.2012 (Annexure A-4). The respondent No.1 issued an advertisement dated 22.07.2013 (Annexure A-5) for filling up various posts on contractual basis. The applicant applied for the post of Medical Officer (Homeopathy) and on being successful in the selection process, he was appointed on the said post vide order dated 29.11.2013 (Annexure A-6). Subsequently, an order dated 27.11.2014 (Annexure A-7) was issued by the respondent-Institute whereby the status of the official appointed on contractual or ad-hoc basis was changed from contractual/ad-hoc to temporary appointment.

3.1 The applicant filed Original Application No.200/43/2018 before this Tribunal seeking regularisation in the respondent-Institute, which was dismissed vide order dated 20.09.2018 (Annexure A-9). Thereafter, the applicant approached the Hon'ble High Court of Madhya Pradesh in M.P. No.4640/2018, wherein the Hon'ble High Court granted interim relief vide



order dated 10.10.2018 (Annexure A-10). Accordingly, the applicant is continuing in service on the strength of the interim order passed by the Hon'ble High Court. On 06.10.2018, the Employees Welfare Association had called for 'Dharna' with the employees of AIIMS, Bhopal on 08.10.2018.



3.2 The respondent-Institute, in response to the notification for Dharna Pradarshan, had approached the Hon'ble High Court of Madhya Pradesh in W.P. No.24317/2018 seeking direction to the Association not to hold Dharna. The Hon'ble High Court vide order dated 08.10.2018 (Annexure A-13), while placing reliance on a judgment of Hon'ble Delhi High Court in the matter of **Salekh Chand Jain vs. Union of India and others**, 2002 SCC OnLine Del 936, has directed as under:

- “(i) No employee of staff or faculty member will cease work for any reason whatsoever or disrupt the work or aid or abet such disruption or cessation.*
- (ii) No use of loud speakers or, shouting of slogans, demonstrations, dharna within the campus.*
- (iii) No meeting within the radius of 500 meters from the boundary of the institute.*
- (iv) No interference in any official work.*
- (v) No resort to any disruptive activity.*
- (vi) All trade union activities will be carried outside the campus.*
- (vii) Any violation will result into disciplinary and other actions.”*



3.3 The applicant submits that the said Dharna was totally peaceful and neither slogans were shouted nor loudspeakers were used as directed by the Hon'ble High Court. However, after about two months from the date of organising the Dharna, the respondent-Institute had issued a show cause notice dated 01.12.2018 (Annexure A-14), wherein the only allegation regarding absence of duty on 08.10.2018 and presence in Dharna Pradarshan was levelled against the applicant. The applicant submitted his reply to the show cause notice on 10.05.2019 (Annexure A-15). However, without considering the grounds raised in the reply, the respondent-Institute have passed the impugned termination order dated 27.05.2019 (Annexure A-1).

3.4 The applicant submits that there is no allegation regarding violation of any terms and conditions of the appointment order in the show cause notice dated 01.12.2018 (Annexure A-14) as well as violation of the directions contained in the order dated 08.10.2018 (Annexure A-13) in W.P. No.24317/2018. Further, the respondents have passed the impugned order of termination dated 27.05.2019 (Annexure A-1) on those allegations with which the applicant was not confronted in the show cause

notice dated 01.12.2018. Thus, the order of termination dated 27.05.2019 is a stigmatic order, which ought to have been preceded by a regular departmental enquiry.

4. Learned counsel for the applicant submits that the stigmatic order, which has been passed without holding the inquiry, is vitiated even if the applicant is a temporary, ad-hoc, or contractual employee. Learned counsel for the applicant, in support of his contention, has cited the following judgments:



- (i) **Dr. Vijayakumaran C.P.V. vs. Central University of Kerala and others**, 2020 SCC OnLine SC 91.
- (ii) **Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**, (2015) 15 SCC 151.
- (iii) **Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others**, (1999) 3 SCC 60.
- (iv) **Raju Dubey vs. State of M.P. and another**, 2004 SCC Online MP 414.

4.1 Learned counsel for the applicant has also cited the judgments of Hon'ble Apex Court in the matter of **Karanjekar and others vs. Ku. Jaya and others**, 2019 SCC OnLine SC 1008 and **State of Haryana and**

another vs. Satyender Singh Rathore, (2005) 7 SCC 518 to say that the impugned order is an order of terminator simpliciter, which deserves to be quashed and set aside.

5. Vide order dated 29.05.2019, this Tribunal has stayed the order dated 27.05.2019 (Annexure A-1) and directed the respondents to continue the services of the applicant.

6. The respondents have filed their detailed reply. It has been submitted that the applicant has not only participated in the Dharna Pradarshan but also instigated others to participate therein. Even the Dharna was not peaceful and many staff members kept aside their duty towards patient care and participated in Dharna Pradarshan. As such, all those employees who took part in the Dharna Pradarshan were issued show cause notice (Annexure R-1) and after considering the reply submitted by the applicant on 10.05.2019 (Annexure A-15), the impugned termination order has been passed. It has been submitted by the respondents that the services of the applicant have been terminated due to gross negligence, dereliction and cynical irresponsibility to his duties. The applicant had taken casual leave for 08.10.2018 to participate in the Dharna Pradarshan. The respondents have filed copy of photographs



(Annexure R-5) to show that the applicant was not only involved in the Dharna Pradarshan but also instigated others to participate therein. The Dharna was organised with utter disobedience of the order dated 08.10.2018 passed by the Hon'ble High Court of Madhya Pradesh in W.P. No.24317/2018.



6.1 It has also been submitted by the respondents that the applicant was not appointed against the advertisement dated 22.07.2013. There is no record about the basis of his appointment (no screening, no interview or any other relevant document) on contractual employment for 11 months w.e.f. 02.12.2013 through appointment letter dated 29.11.2013. Thus, it was all and all a backdoor entry. It was made clear in the offer of appointment that the engagement on contract basis shall not confer on the applicant any claim as of right or otherwise for consideration for regular appointment in AIIMS, Bhopal. The Original Application No.200/43/2018 filed by the applicants for regularisation has already been dismissed by this Tribunal vide order dated 20.09.2018 (Annexure A-9). The applicants are continuing in the respondent-Institute on the strength of the interim order dated 10.10.2018 passed by the Hon'ble High Court of Madhya Pradesh in MP 4640/2018. It has also been submitted that since the

applicant is working on contractual basis, there is no need to hold regular departmental enquiry against him under the CCS (CCA) Rules, 1965. The contract of the applicant has been completed and the services of the applicant is being terminated due to the gross negligence, dereliction and cynical irresponsibility towards duties on his part.



7. The respondents along with their reply to application for appropriate directions, have filed copy of the order dated 30.07.2019 (Annexure MA/1) passed by the Hon'ble High Court of Madhya Pradesh in M.P. No.4640 of 2018 and other connected petitions, whereby the writ petition filed by the applicants has been dismissed.

8. We have heard the learned counsel for the parties and perused the pleadings and the documents annexed therewith.

9. It is undisputed fact that in pursuance to Dharna Pradarshan organised by a group of contractual and outsourced employees on 08.10.2018, a committee was constituted to take disciplinary action against those contractual non-faculty employees who had participated in the said Dharna Pradarshan. Accordingly, vide order dated 18.10.2018 (Annexure R-1), the respondent-Institute has decided to issue show cause notice against 10 officials who had participated in the Dharna Pradarshan.

The applicant was also issued with the show cause notice on 01.12.2018 (Annexure A-14). The relevant extracts of the show cause notice (Annexure A-14) read as under:

“4. WHEREAS, you were found absent from duty and identified as present during illegal ‘Dharna Pradarsha’ organised by a group of contractual and outsourced employees on 8th October, 2018 in AIIMS Campus for their illegitimate demands.

5. WHEREAS, your presence and participation in ‘Dharna Pradarshan’ in the AIIMS Campus is considered as subversive of discipline.

6. AND WHEREAS, your above acts of unauthorized absence from duty place and participation in ‘Dharna Pradarshan’ on 8th October, 2018 is prejudicial to the interests and reputation of the Institute.”

9.1 The main allegation against the applicant was that he was found absent from duty and identified as present during the Dharna Pradarshan. No allegation regarding violation of any terms and conditions of the appointment order was levelled in the show cause notice.

10. It is the case of the applicant that the Dharna Pradarshan organised on 08.10.2018 was peaceful in nature and for hearing the genuine demands of employees. As soon as the order of Hon’ble High Court of Madhya Pradesh in WP No.24317/2018 was brought to the notice, the peaceful demonstration was called off and all services were resumed. The



applicant, in reply to the show cause notice on 10.05.2019 (Annexure A-15) has specifically averred the peaceful assembly and demonstration while holding Dharna by the Employees Welfare Association. It has also been averred that neither any casualty was caused nor the functioning of the Institute affected during the said Dharna Pradarshan.

11. As per Annexure A-1 dated 27.05.2019, the order of termination has been passed by the respondent-Institute with the following reasons:

“XXX

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XXX

5. In spite of the aforesaid Hon’ble High Court order and the referred Circular, you have instigated others and also actively participated in the Dharna/Pradarshan on 08.10.2018 and disrupted the patient care services of AIIMS Hospital. In fact, the Dharna/Pradarshan was not peaceful in nature and the local administration through Police had to use force to remove the tent and disperse the unruly participants. Thus, you have put danger to life of many patients by stopping the employees who were trying to join the services on the said date by obstructing their entry in the Hospital premises.

XXX

XXX

XXX

11. Your misconduct is, thus, potential threat to the tranquility and discipline of this Institute of National Importance and an attempt to disrupt the patient care services which is absolutely against the public interest at large. Therefore, your reply is not found satisfactory by the competent authority of the Institute.”

12. Perusal of the impugned termination order makes it clear that the reasons given therein were not at all mentioned in the show cause notice.



The show cause notice is only with respect to participation of the applicant in the Dharna Pradarshan and absence from duty on 08.10.2018, whereas termination order talks of misconduct on the part of the applicant by instigating others to participate in the Dharna Pradarshan as also Dharna Pradarshan being not peaceful. There is nothing on record to show whether the findings arrived while issuing the termination order were based on some enquiry and reasonable opportunity was given to the applicant. The findings regarding misconduct, if any, on the part of the applicant, can only be arrived when regular departmental enquiry is conducted irrespective of the fact that the applicant is a temporary, ad-hoc or contractual employee. Thus, we find that the order of termination is stigmatic in nature and could not have been passed without holding a departmental enquiry.

13. In the matters of **Dipti Prakash Banerjee** (supra), the Hon'ble Supreme Court while referring the case of **Bishan Lal Gupta vs. State of Haryana**, (1978) 1 SCC 202, has held that an ordinary inquiry by a show cause might be sufficient for the purpose of deciding whether the probationer could be continued. But where the findings regarding



misconduct are arrived at without conducting a regular departmental inquiry, then the termination order will be vitiated

14. In view of the aforesaid, the impugned termination order is quashed and set aside. The respondents are directed to continue the services of the applicant, if discontinued, with back wages. However, it will be open to the respondents to take such action as they deem fit in accordance with law against the applicants. The respondents may take further action as per the terms and conditions of the appointment order. No costs.

15. Accordingly, all three Original Applications are allowed. No costs.



(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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