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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1141/2004

New Delhi this the 2nd day of November, 2004

Hon'ble Shri S.K. Naik, Member (A)

Jenny Kurian,
D/o Shri Varkey Kurian,
R/o 79C A-1, Mayur Vihar Phase-III,
Delhi-96.

.....

Applicant.

(By Advocate Shri K. Vijayan)

Versus

1. Lt. Governor of Delhi,
6, Raj Niwas Marg, Delhi-54.
2. NCT of Delhi
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
3. NCT of Delhi,
PHC Cum Jt. Secretary (Health),
1, Jawahar Lal Nehru Marg,
New Delhi-2.
4. Delhi Subordinate Services
Selection Board through its
Secretary, III Floor, UTCS
Building behind Karkardooma
Court Complex, Vishwas Nagar,
Shahdara, Delhi-32.
5. LNJP Hospital
through its Medical Supdt,
Jawahar Lal Nehru Marg,
New Delhi.

.... Respondents.

(By Advocate Shri Ajesh Luthra)

Avail

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O R D E R (ORAL)

This O.A. is directed against the order dated 28.04.2004, wrongly stated as 08.04.2004 in the O.A., vide which the respondents have asked the applicant and other persons to communicate to them the status of any court case that they may have filed against them within three days of the receipt of the communication, failing which it has been stated therein that it will be presumed that they have nothing to say in their defence and that their services shall be terminated forthwith without assigning any reason.

2. The applicant apprehends that the letter is intimidating in nature and a direct threat to her continuance in service even though she has been in continuous appointment of the respondents since May, 1998. Counsel for the applicant has contended that the applicant is a fully qualified and experienced 'A' grade Nurse and had joined the services of the respondents in response to a public advertisement when the respondents were facing a serious problem of strike in their hospital. Even though in the public advertisement the offer of appointment given was on contract, the counsel contends that there was a tacit assurance given to the applicant amongst hundred of others that their services would be subsequently regularized. The learned counsel in support thereof has referred to certain notings on the representations by the then Health Minister and the Govt. of NCT and some reports in the newspapers clipping. He has further gone on to contend that even though the upper age limit for recruitment was 32 years under the Rules, against the emergency situation, the respondents have appointed persons much beyond the upper age limit. He, therefore, contends that the relaxation of the upper age limit was inherent. However, to be on the safe side, the applicant had submitted a representation before the Lieut Governor, who enjoyed the powers to relax the rules, to provide the

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relaxation in her case as she was more than 32 years at the time of her initial engagement of contract.

3. The counsel further submits that while she has not filed any court case earlier despite a number of her colleagues having approached this Tribunal and the High Court with regard to their regularization, it is apprehended that her services would be terminated illegally even though the services of others, who had approached the courts continued to remain in service on the strength of the stay/judgements delivered by the various courts. Referring to the judgement of the Apex Court in State of Haryana Vs. Pyara Singh and Ors. (JT 1992 (5) SC 179), in which it has been held that an ad hoc employee should not be liable to replacement by other similarly recruited appointees on ad hoc basis and can be replaced only by regularly selected candidates, learned counsel submitted that a direction be given to the respondents not to dispense with the services of the applicant. He has also submitted that a direction be issued to the respondents to relax the upper age limit of the applicant and regularize her services keeping in view that she has been in the employment of the respondents continuously since 1998.

4. Respondents have contested the O.A. The learned counsel for the respondents has advanced the defence on their behalf contending that the applicant has absolutely no case. Referring to the public notice based on which the applicant was appointed, he has argued that as is obvious from the notice, the respondents had wanted qualified nurses on contract basis immediately and Nurses upto 65 years of age could apply for the same. Thus, to say that either the appointment was to be made on ad hoc basis or that there was any implicit idea behind grant of relaxation of the upper age limit is totally fallacious. In fact, he has gone on to argue that the applicant has misinterpreted the advertisement to mislead the Tribunal. The counsel, ^{however} ~~however~~ has not denied that the contractual appointment was extended from time to time in the exigencies of patient care.

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5. Refuting the claim of the applicant that forms for the so-called regularization were distributed by the respondents, the counsel states that there were neither any separate application forms for regularization of the contract employees nor were they distributed by the respondents amongst such employees. According to him, application forms of DSSB were the same for all the posts advertised by DSSB and they are purchased by intending applicants at a price. With regard to the claim of regularization, the learned counsel has contended that by now it is well established by various judicial pronouncements that the Tribunal cannot direct or order regularization de hors the rules. The prayer for regularization, therefore, should be rejected. With regard to the perceived threat of termination conveyed through the impugned order, the learned counsel submitted that only information with regard to any order obtained by certain employees from various courts has been asked for so that the respondents may not trip or ignore any direction that may have been given by a court. It is only in the nature of collection of data/information and the services of the contract employee could be terminated only in terms of the clauses in the contract appointment. The counsel, therefore, contends that the applicant has no reason to apprehend any action which will not be in conformity with law.

6. I have considered the contentions raised by the learned counsel for the parties. It is an admitted fact that the applicant was appointed on contract and the contract is being renewed from time to time. It is also an admitted fact that the applicant at the time of her initial appointment on contract was over aged. The public advertisement issued at that time clearly indicated that qualified Nurses upto the age of 65 years could apply for the same. Thus, it would not be correct to say that there was any implied or implicit intention behind the advertisement to relax the upper age limit at a subsequent stage. Further, the DSSB will go by the provisions of the recruitment rules and if the applicant was over aged at the time of her initial engagement, her application would not be considered, on the ground of not

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conforming to the upper age limit. I am afraid the contention raised by the learned counsel for the applicant that a direction could be given to relax the upper age limit since she has been in the service of the respondents from 1998, will not be correct since the applicant ab initio did not fall within the prescribed age limit. Had she become over aged because of the subsequent engagement by the respondents, her case would have been different.

7. With regard to her claim for regularisation on the basis of service rendered, I have perused the order in OA No. 1490/2003, decided by this Tribunal on 19.02.2004, on which the counsel has relied upon but find that the same would not help the applicant inasmuch as what the order says is that “the respondents would endeavour to consider the candidature of the applicants favourably against the available vacancies by according them age relaxation for the period of service they have rendered with them since the period of their joining with the Government hospitals.....”. As stated above, this will not be applicable to the case in hand as the applicant herein was over aged at the time of her initial appointment.

8. However, I find that the respondents have been extending the contract of the applicant from time to time. Since she has served the Department ever since May, 1998, it would be appropriate that her services should not be dispensed with unless her work and conduct is not found suitable/ ^{satisfactory to} or she is replaced by a regularly selected person. With this direction, the O.A. is disposed of. No costs.

S.K. Naik
(S.K. Naik)
Member (A)

‘SRD’