

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1518/2004

This the 5th day of September, 2005

HON'BLE MR. V.K.MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)

Hakim Shahnawaz Ali,
S/o Shri Abdul Latif Ansari,
R/o Gali No.1, Madarsa Walil
Kabir Nagar, Shahdara,
Delhi-110094.

.....Applicant.

(By Advocate: Sh. G.D.Gupta, Senior counsel with
Sh. S.K.Sinha)

Versus

1. Government of National Capital
Territory of Delhi
Through the Chief Secretary,
I.P.Sachivalaya,
New Delhi-110002.
2. The Principal Secretary,
Health & Family Welfare,
Government of National Capital
Territory of Delhi
I.P.Sachivalaya
New Delhi-110002.
3. The Director,
Indian System of Medicine,
Government of National Capital
Territory of Delhi
Directorate of Health Services,
Karkardooma, elhi.
4. The Administrator,
Ayurvedi & Unani
Tibbia College & Allied Units,
Government of National Capital
Territory of Delhi,
Karol Bagh,
New Delhi-110005.
5. Union Public Service Commission
through its Secretary,
Shahjahan Road,
New Delhi.

....Respondents

(By Advocate: Sh. Vijay Pandita for respondents No.1 to 4
Sh. Asish Nischal for respondent No.5)

ORDER (ORAL)

Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

The present OA is filed for the grant of following relief:-

- (i) declare that the applicant has a lien on the post of Hakim in the A&U Tibbia College and
- (ii) issue of directions in the nature of mandamus to the respondents to consider the case of the applicant for absorption on the post of Lecturer in the A&U Tibbia College with all consequential benefits including his seniority and other benefits, which will accrue on such absorption due to his past service on analogous post and
- (iii) declare that the applicant is entitled for consideration of the case of the applicant for absorption on the post of Lecturer in the A&U Tibbia College with all consequential benefits including his seniority and other benefits, which will accrue on such absorption due to his past service.

2. The facts stated in the OA, briefly stated, are as follows. The applicant was appointed as Hakim in Hindustani Dawakhana, which was an allied unit of Tibbia College, on 21.2.1987 on regular basis. In 1998 in response to an advertisement issued by the College for appointment of Lecturers in its teaching faculty, published on 10.7.98, the applicant applied through proper channel for the post of Lecturer, Moalijat. He was selected for the post and was appointed on ad hoc basis vide order dated 30.10.98 (Annexure A-5). On 23.10.98 the applicant apprised the respondents that he was already in the service of the allied unit of the College and that he may be relieved of the said post to enable him to join the post of Lecturer and requested for retaining his lien on the post of Hakim (Annexure A-6). The applicant was relieved from the post of Hakim on 27.10.98 and he joined as an ad hoc Lecturer in the College w.e.f. 28.10.98. He was given pay protection and his pay was fixed at Rs.8665/- in the pay scale of Rs.8000-13500 + NPA vide order dated 13.2.99 (Annexure A-7). The applicant again requested the respondents for retaining his lien on the post of Hakim (Annexure A-8).

3. It is further alleged that the Government of NCT of Delhi took over the College w.e.f. 1.5.98 by enacting Delhi Tibbia College (Take Over) Act, 1997. Thereafter recruitment rules for the teaching faculties were also notified. Applicant fulfilled all the eligibility conditions for appointment to the post of Lecturer. The applicant on 13.11.2002 made a representation for his absorption to the post of Lecturer but the same

had been rejected. His specific representation claiming that he had a lien on the post of Hakim in Hindustani Dawakhana which was an allied unit of the College has also failed to evoke any response from the respondents. Hence the OA.

4. The respondents No.1 to 4, the Govt. of NCT of Delhi, its Principal Secretary (Health), the Director Indian System of Medicine of Govt. of NCT of Delhi and Administrator Ayurvedic and Unani Tibbia College and allied units of the Govt. of NCT of Delhi have filed a joint counter reply repudiating the claim of the applicant on both counts. They have pleaded that the appointment of the applicant as Lecturer in the College was purely on ad hoc basis with the specific stipulation that it was for 6 months or till a regular appointment to the said post was made and this ad hoc appointment was extended by various orders with the same stipulation which are filed at page 31 to 41. Proper recruitment rules for the post of Lecturer were notified on 11.12.2002 which provided that direct recruitment to the Group 'A' would be made in consultation with the UPSC. As such a requisition dated 16.4.2003 was made to the UPSC for selecting the candidate for the post of Lecturer as per recruitment rules dated 11.12.2002. Since the applicant has accepted the appointment as Lecturer on ad hoc basis with full knowledge of the terms and conditions mentioned in the offer of appointment he cannot claim regularisation to the post of Lecturer.

5. As regards the second contention, the respondents No.1 to 4 pleaded that the applicant was appointed on a temporary post of Hakim on 21.2.1987 in Hindustani Dawakhana and Ayurvedic Rasayanshala Ballimaran which is a sister unit of Tibbia College and Hospital. He has failed to produce any order by which his lien on the post of Hakim was retained after he was relieved for joining as Lecturer in the College nor has he produced any document to show that the post of Hakim in Hindustani Dawakhana was made permanent. Therefore, his claim that he had a lien on the post of Hakim in the said unit of the College also does not have any force.

6. The UPSC respondent No.5 has filed a separate counter refuting the claim of the applicant. It has also stated that the appointment of applicant as Lecturer on ad hoc basis was not in consonance with the Govt. instructions issued by the DOPT from time to time and the applicant's request for regularization of his ad hoc appointment was not legally sustainable.

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7. Applicant has filed rejoinder and has reiterated his own case and denied pleas of the respondents.

8. We have heard the learned counsel for the parties and have perused the relevant documents.

9. From the averment made in the OA and the document which have been filed by the respondent it is clear that applicant was appointed to the post of Lecturer in the College w.e.f. 28.10.98 purely on ad hoc basis till a regularly appointed candidate becomes available for joining the post. In fact the Govt. of NCT of Delhi had taken over the College, which itself was established under Tibbia College Act, 1952 w.e.f. 1.5.98, by enacting Tibbia College (Take Over) Act, 1997. Since the recruitment rules for appointment to the faculty were to be prepared and the recruitment to the post of Lecturer, which was a Group 'A' post, was to be made by the UPSC the post of Lecturer, until the regular appointees are available, was filled on ad hoc basis by issuing a public notice in July 1998 (Annexure A-4). The applicant who was working as Hakim in an allied/sister unit of the College applied and on selection was appointed to the post of Lecturer in the College on ad hoc basis initially for a period of 6 months w.e.f. 28.10.98. It was clearly stipulated in the offer of appointment and the appointment letter that the appointment was ad hoc and would not confer any right to claim regularisation to the post. Since there was delay in notifying recruitment rules for regular selection of Lecturers, a Group 'A' post, through UPSC the ad hoc appointment of Lecturer was extended each time for a period of 6 months. The letters of re-appointment of the applicant and similarly placed other persons have been placed on record by the applicant from pages 36, 38 to 41. In all these orders it has been stipulated that the extension of term of appointment would not entitle the incumbent to claim seniority or regularization of the appointment to the post of Lecturer or any other equivalent post. The copy of the initial offer of appointment was filed with counter of respondents No.1 to 4 as Annexure R-3 and one of the condition of the appointment letter is extracted as under:-

"On the recommendations of the Staff Selection Board, the Lt. Governor, Delhi is pleased to appoint Dr. Shahanawai Ali to the post of Lecturer Unani in Molijat subject on a purely temporary and ad hoc basis with effect from the date of his joining the post for a period of six months, or till regular appointment is made, which ever is earlier, on the following terms and condition:-

M. A. Ali

1. The post is purely on ad hoc basis for a period of six months or till regular appointment is made, whichever is earlier. The appointment can be terminated at any time (on either side) by giving one month's notice or by paying one month's salary without assigning any reason or failure to complete the initial period of three months to the satisfaction of the competent authority."

10. The applicant has accepted the appointment unconditionally with full knowledge of the implications and the consequences of the conditions under which the appointment was made. Applicant has prayed in the OA that he should be considered for regularization to the post of Lecturer de hors the recruitment rules, which is not legally tenable. Ad hoc appointments, howsoever long, would not confer indefeasible legal right on the incumbent holding the post on ad hoc basis for regularization of the appointment de hors the rules. The recruitment rules, copy of which has been placed on record by the respondents No.1 to 4 as Annexure R-5, showed that the method of recruitment to the post of Lecturer was direct recruitment. It was a Group 'A' post and the direct recruitment was to be made in consultation with the UPSC. The ad hoc appointment of the applicant, therefore, does not confer on him any right for regularization on the post. We are fortified in this view by the decision of the Hon'ble Supreme Court in Dr. (Mrs.) Chanchal Goyal vs. State of Rajasthan (2003) 3 SCC 485, Union of India and others vs. Harish Balkrishna Mahajan 1996 (6) SLR SC 669, Dr. Surinder Singh Jamwal & another vs. State of Jammu & Kashmir & others JT 1996 (6) SC 725, State of Madhya Pradesh & Another vs. Dharam Bir (1998) 6 SCC 165, Ahmedabad Municipal Corporation vs. Virendra Kumar Jayantibhai Patel (1997) 6 SCC 650 where it had been laid down that ad hoc appointment and its extension till the regular incumbents became available would not give legal right to the ad hoc appointees to get his services regularized de hors the rules.

11. As a result we do not find any merit in the first contention of the applicant that since he fulfilled the eligibility conditions for recruitment to the post of Lecturer in the College and he was holding the post of Lecturer on ad hoc basis for long, he should have been considered by the respondent for regular appointment without undergoing the selection process in the UPSC. Neither the recruitment rules nor did the Tibbia College (Take Over) Act, 1997 give legal right to the applicant for regular appointment to the post. Section 7 of Tibbia College (Take Over) Act, 1997 apply to those who were

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working with the College when it was taken over, i.e. as on 1.5.98. The applicant joined the college much after in October, 1998. So his case, so far as, the appointment/regularization on the post of Lecturer is concerned would not be covered by that provision. The applicant as such cannot be granted the relief prayed for in clause (ii) & (iii) of para 8 of the OA. A bunch of OAs filed by some Lecturers who were also appointed on ad hoc/temporary basis in response to advertisement of the College issue in July 1998 and had approached this Tribunal for regularization of their services, has been dismissed by this Tribunal by order dated 1.4.2004, copy of which has been attached as Annexure R-1 to the counter reply of respondents No.1 to 4.

12. Reverting to the claim of the applicant that he was holding a lien to the post of Hakim in Hindustani Dawakhana, an allied unit of the College, it is pertinent to mention that both the applicants and the respondents No.1 to 4 agreed that the applicant was appointed to the post of Hakim on temporary basis by an appointment letter dated 20.2.1987 (Annexure A-1). The appointment letter stated that the applicant was being appointed to the post of Hakim in Unified Pharmacy, Ballimaran, Delhi on temporary basis in the pay scale of Rs.650-1200 with usual allowance as admissible to the Tibbia College Board. The offer of appointment dated 7.2.87 to the post crucial on the question is being extracted below:-

“On the recommendations of the Staff Selection Board, the undersigned hereby offers Shri Shahanawaz Ali, a temporary post of Hakim in the Unified Pharmacy, Ballimaran, Delhi at the initial pay of Rs.650/- p.m. in the scale of Rs.650-1200 plus usual allowances on temporary basis. The terms & conditions of appointment are as under:-

1. Service conditions will be governed by the Tibbia College Act, 1952 and the Rules & Regulations made thereunder.
2. The appointment shall be on probation for a period of 2 years which may be extended, if considered necessary by the Appointing Authority.

.....”

13. It is not disputed that the Unified Pharmacy, Ballimaran known as Hindustani Dawakhana Ayurvedic Rasayanshala Ballimaran is a unit of Tibbia College and was taken over by the Government of NCT of Delhi along with the College under Tibbia College (Take Over) Act, 1997 w.e.f. 1.5.98.

[Handwritten signature]

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14. Learned counsel for applicant strenuously argued that the appointment of the applicant though initially on temporary basis was regularized on completion of the probation period stipulated in the offer of appointment dated 7.2.87. Though the respondents No.1 to 4 in the counter reply have strongly refuted the claim of the applicant but they have conveniently not produced any record relating to the creation of the post in Unified Pharmacy/Hindustani Dawakhana nor have produced any document to show that the post continued to be temporary till 1999 when as per the averments made in the counter reply, it was abolished on Hindustani Dawakhana becoming defunct. Contrarily the offer of appointment dated 7.2.87 at page-18 belied the allegation of the respondent and supported the claim of the applicant. Though the applicant was appointed on the temporary post of Hakim but he was appointed on a probation of 2 years which could be extended, if considered necessary, by the appointing authority. A person appointed to the temporary post is not put on probation. His appointment being temporary and the post itself being temporary was liable to be terminated in terms of the appointment letter and the applicable extant recruitment rules. The applicant had worked as Hakim from February, 1987 to October 1998. It is a pretty long period. The respondent could have easily procured the relevant record of Tibbia College to prove that the post of Hakim continued to be temporary so long as the applicant occupied it and the services of the applicant were not regularized. The contention of respondents No.1 to 4 in their counter reply that the applicant has not produced such document to our view has no force. The respondents were in possession of the best evidence and irrespective of onus of proof being on the other party the party ^{-ing} have possession of best evidence must produce it otherwise adverse inference could be drawn against it. It was for the respondents to prove by producing official record as to what was the nature of employment of the applicant in October 1998 when he was relieved to join to the post of Lecturer on ad hoc basis in the College.

15. Another strong circumstance which supports the claim of the applicant that he was holding a permanent post of Hakim in Hindustani Dawakhana is his repeated request made to the authorities of the respondent Government to retain his lien to the post when he was relieved to join as ad hoc Lecturer in the College. The letter of the applicant dated 23.10.98 (Annexure A-6) has clearly stated that his lien to the post of Hakim be

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retained during the period he worked as ad hoc Lecturer in the College. The endorsement made thereon showed that applicant was allowed to join the college and he was deemed to have been relieved from Dawakhana. But he was required to assist the "Manager duty in free time in disposing of the responsibilities, if any, in the Pharmacy and this is to be completed in 15 days time". The applicant was relieved on 27.10.98. By his letter dated 27.10.98 (Annexure A-7) he had again told the authorities of the respondent Government that he was working on the post of Hakim in the Hindustani Dawakhana and he had been selected for the post of Lecturer in Tibbia College. There is yet another letter dated 20.10.98 (Annexure A-7 collectively) which also stated the Health Secretary of the Government of NCT that the applicant was entitled to enjoy all the benefit and privilege which he had been receiving till date. In short the applicant repeatedly requested the respondents to retain his lien on the post of Hakim. Evidently this request was made by the applicant on the ground that his appointment to the post of Lecturer in the College was on ad hoc basis. The authorities of the respondent Govt. of NCT of Delhi never informed the applicant that he had no lien on the post of Hakim nor had the authorities terminated the lien of the applicant on such post on his joining the post of Lecturer on ad hoc basis. The contention in the counter reply of respondents No.1 to 4 that applicant has failed to produce any letter that his lien was retained on the post of Hakim, to our view, is devoid of any force. The record was in the custody of the authorities of the Govt. of NCT of Delhi and it was for them to prove firstly that the applicant did not have any lien on the post of Hakim in the Hindustani Dawakahana and secondly that if he had lien, the same was terminated on his joining the post of Lecturer in the College on ad hoc basis in October 1998. The respondents No.1 to 4 have failed to discharge this heavy onus on them. We are accordingly constrained to hold that the applicant was holding post of Hakim in Hindustani Dawakhana, which was a unit of Tibbia College on regular basis and that on appointment to the post of Lecturer in Tibbia College on ad hoc basis his lien to the post of Hakim was not terminated.

16. As observed above, Tibbia College and its allied units were taken over by the Government w.e.f. 1.5.98 under Tibbia College (Take Over) Act, 1997. Section 7 of the Act which regulated the services of the employees of the College who were in position when the Act came into force, being relevant is reproduced below:-



"Provisions relating to the employees of the college – Where the services of a person, who had been immediately before the appointed day employed in the college are in the opinion of the Government necessary having regard to the requirements of the college he shall become from the date of his appointment by the government, an employee of the Government and shall hold office or service in the Government with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such college had not been transferred to and vested in the government and continue to do so unless and until his employment in the college is duly terminated or until his remuneration and terms and conditions of employment are duly altered by the Government;

Provided that such employees shall, in themselves, constitute a separate class and group of employees of the government and shall not be equated to or merged with the other employees of the Government."

17. Section 7 spelt out firstly that it would apply to those persons who were in the employment of the College on the date on which the Act had come into force and secondly the Government was to consider immediately whether the employment of those employees was necessary having regard to the requirement of the College and having formed this opinion was to give appointment to them. As a result of this appointment the employees would become, from the date of such appointment, Government employees. Section further provided that such appointees would have rights and privileges as to pension, gratuity and other matters as would have been admissible to them before the taking over of the College by the Government. As per this Section they would continue to be governed by those rules till his employment is terminated or the terms and conditions of his employment are altered. The proviso to Section 7 made the position further clear by stipulating that all those employees who are appointed under Section 7 would constitute a separate class and group of Government employees and they would not be equated to or merged with other employees of the Government.

18. The applicant was in the regular service of the College as Hakim in its allied/sister unit, Hindustani Dawakahana and Ayurvedic Rasayanshala, Ballimaran as on 1.5.98 when Tibbia College (Take Over) Act, 1997 came into force. The applicant was holding a lien to the post of Hakim on that date. Subsequent abolition of the post or the unit becoming defunct would not alter the legal position. In fact no documents has been produced by the respondents No.1 to 4 firstly to prove that the post of Hakim which the applicant was holding and on which he had lien, was abolished or that Hindustani Dawakahan or Ayurvedic Rasayanshala, Ballimaran was closed or had become defunct in

1999. Anyhow the applicant was never absorbed on permanent basis on the post of Lecturer in the College. He continued to hold the post of Lecturer on ad hoc basis. He shall be continued to be holding the lien on the post of Hakim. His lien was not terminated as held earlier. By virtue of Section 7 reproduced above, it was incumbent on the respondent Government of NCT of Delhi to carry out the exercise contemplated under Section 7. It has not been done by the respondents. We are told that certain other staff of the College in the meantime had been appointed by Government by virtue of Section 7 of Tibbia College (Take Over) Act, 1997.

19. In view of the above finding, the applicant is not entitled to the grant of relief claimed in clause (i) and (iii) of para 8 of the OA. We order accordingly.

20. We further hold that the applicant had a lien on the post of Hakim in Hindustani Dawakhana Ayurvedic Rasayanshala, Ballimaran and allow relief prayed for in clause (i) of para 8 of the OA. We give direction to the respondent to consider his case also for appointment in accordance with Section 7 of Tibbia College (Take Over) Act, 1997. This exercise will be carried out by respondents No.1 to 4 within three months from the date on which copy of this order is received by them. The OA stands disposed of in terms of the above direction. No costs.

(M.A. KHAN)
Vice Chairman (J)

'sd'

(V.K. MAJOTRA)
Vice Chairman (A)