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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
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O.A. No. 63 OF 1986
~~EX-1000~~

DATE OF DECISION 6-10-1986

GEETABEN J. THAKKAR & OTHERS. Petitioner(s)

R.J. OZA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & OTHERS. Respondent(s)

R.M. VIN Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

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JUDGMENT

OA/63 OF 1986

Date: 6-10-1986.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioners viz; (1) Geetaben, (2) Kamuben and (3) Bhavnaben, holding the post of Midwives in the pay scale of Rs.260-350 (since 13.9.83, 8-4-83 & 1.6.80 respectively) are serving in the Railway Hospital at Bhavnagar. They are working on the said post till to-day and performing duties as Auxillary Nurse-cum-Midwives as they are possessing Diploma in Auxillary Midwifery, and as such, a special pay of Rs. 35/- is given to them, as they are required to look into the work of Nurse by the order of the Respondent No.3 dated 18.11.1985.

The petitioners, being aggrieved by the order No.RRB/ADI/R&T/E/1/85-86 dated 25.3.1986 (Annexure 'A'), contend that eventhough, they had made application to the Respondent No.4 through proper channel in response to the Railway Administration advertisement calling for the applications for the category of Midwives in 1983, they are not called for interview. They apprehend that the respondents are likely to terminate their services in order to accomodate the Staff Nurses selected by the Railway Recruitment Board. It is further contended by them that they are denied right

to equality of opportunity in the matter of employment inasmuch as their services are not regularised when the respondents have regularised the services of the similarly situated Midwives. The petitioners, therefore, seek direction for regularising their services in the Cadre of Midwives. They have also prayed that the respondents be restrained from terminating their services.

While opposing the application, it is contended by the respondents that the petitioners were appointed as Midwives on adhoc basis and when the said post are abolished as per Head Quarter Office letter No. E/367/10/10/3 dated 16.2.1985, there was no question of issuing any employment notice for filling the non-existent posts and the new posts of "Staff Nurses" in scale of Rs.425-640 for which a proper employment notice was issued and selection has been made vide order dated 25.3.1986.

According to them, in view of the decision of the Railway Board, the action of termination of the services of the petitioners by the Respondents, if taken, would not be illegal or arbitrary as their appointments are purely adhoc and conditional.

The crucial question required to be decided in the instant application is whether the petitioners are eligible for being regularised for the post held by them ? The petitioners have filed their rejoinder (page-26) dated 15.5.1986, whereas the respondents have filed counter reply on 10.6.1986 alongwith Annexure 'A' (page-37), the letter dated 16.2.1985 addressed by the Chief Medical Officer of the Head Quarter Office, Church Gate, Bombay.

The petitioners have filed further rejoinder to the counter reply on 25.6.1986, wherein, they have relied on the documents appearing at Annexure 'B' to 'F'.

At the very outset, it may be stated here that there is nothing on record to suggest that the Railway Administration has decided to terminate the services of the petitioners, who are adhoc appointees. The Chief Medical Officer under his letter dated 16.2.1985 has stated that "the cadre of Midwives has been abolished and has to be treated as diminished cadre". In this regard he has referred to the Board's letter No.E/PNA/1-34/PS/5/MH-1 dated 18.8.1984. Unfortunately, the said letter is not brought on record. However, it transpires from the letter (16.2.85) that it was on the subject of appointment and promotion of Midwives/Auxillary Nurses-cum-Midwives etc. The direction issued by the Chief Medical Officer is in the following terms :

"In view of this you are advised hereby not to make any adhoc appointment of Midwives in the vacancies arising from resignation or retirement of Midwives (emphasis supplied). Such vacancies should be filled up by staff Nurses".

Mr. R.J. Oza, the learned counsel for the petitioners submits that neither the Railway Ministry nor the Railway Board has laid down any policy to terminate the services of Midwives. According to him, as per the direction contained under letter dated 16.2.1985 the vacancies for the post arising from resignation or retirement of Midwives only, are required to be filled up by the Staff Nurses. In his submission the Midwives who have completed 3 years

of services are required to be absorbed in regular employment. In support of his submission he has pressed in service, the decision and directives issued by the Railway Board and the Ministry as contained in letter dated 17.10.1985(Ann. 'B') and other letters found at Annexure 'D', 'E' & 'F'. Mr.R.M.Vin, learned counsel for the respondents, however, contends that as the petitioners are adhoc appointees they have no right for permanent absorption and the petitioners except Bhavnaben had not even completed 3 years of service at the relevant time, they are not eligible for being regularised as envisaged.

The letters of appointments containing the terms and conditions of the services of the petitioners are not forthcoming. However, it is undisputed that they are adhoc appointees subject to availability on regularly selected candidate for the cadre of Midwives available from Railway Recruitment Board.

It is now obvious that when the cadre of the Midwives has to be treated as diminished cadre (emphasis supplied) there is no question of regular recruitment of the selected candidate for the said cadre. The pertinent question of regularisation of adhoc employees had arisen and consequently the Railway Ministry had provided the guidelines as indicated in letter dated 17.10.85 (copy whereof found at Annexure 'B'). They have approved the cases of two Midwives who had since completed three years of services for being absorbed in regular employment. They were required to be considered by a committee of three officers including the Chairman or Member Secretary of the Railway Recruitment Board, provided

the candidate satisfy the prescribed conditions in regard to age limit and educational qualifications and are found suitable in regular appointment, as it was intended in the case of (1) Assistant Chemist, (2) Staff Nurse & (3) Pharmacists. In this regard it is further borne out from the letter dated 19.3.1986 addressed by the General Manager to the Secretary, Railway Board, that the petitioner No.3, Bhavnaben was eligible for regularisation by screening as indicated in para 3.1 of Railway Boards letter No.E(NG)II/85/RC3/11 dated 4.10.1985. It is clear from the correspondence placed on record that no dead-line or appointed date is indicated for computing the completion of three years of services in the case of adhoc appointees and especially when all the three petitioners are still holding their post in the Railway Administration and by now they have duly completed the tenure of three years of service, they are eligible for being regularised and absorption in regular employment.

In the case of Manager, Government Branch Press Vs. D.B.Belliappa (AIR 1979 S.C.p.429), it has been held that the protection of Article 14 & 16 of the Constitution will be available even to a temporary government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to the employees similarly circumstanced. In the present case when the Railway Ministry have considered the case of two Midwives who had since completed three years of services for absorption in regular employment, the action of termination of services of the petitioners on the part of the respondents would be clearly in violation of the fundamental right to equality of

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opportunity in the matter of employment as it would be offending the "equality clause in Articles 14 & 16 of the Constitution of India. The objectives of the directive principles of State policy underlying the social and economic justice, are fundamental to the governance of the State under our Constitution. It is in this limited context, ^{that} the case of the petitioners merits consideration.

In view of the aforesaid discussion, it is held that the petitioners are eligible for being regularised by screening by a Selection Committee as indicated in the Railway Board's letter No.E(NG)II/85/RC3/11 dated 4.10.85. The respondents however would be at liberty to dispense with the services of the petitioners (being adhoc) in case, they fail at the screening test and do not satisfy the prescribed conditions in regard to age limit and educational qualifications. But in the meantime the respondents are restrained from terminating the services of the petitioners before affording them the opportunity of being screened by a Selection Committee as stated earlier. The application is partly allowed. In view of the peculiar circumstances of this case the parties are directed to bear their own costs.


(P.H. TRIVEDI)
VICE CHAIRMAN


(P.M. JOSHI)
JUDICIAL MEMBER