

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 139 of 2013

Wednesday, this the 29th day of July, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Anwar Sadique Khan A.P.,
S/o. K.P. Hamza, aged 36 years,
Ayshepura, Kavaratti, Kavaratti Post,
Union Territory of Lakshadweep, Pin-682 555. **Applicant**

(By Advocate : Mr. V.J. James)

V e r s u s

1. The Secretary, Health Department,
Kavaratti, Union Territory of Lakshadweep,
Pin – 682 555.
2. The Director of Health Services, Kavaratti,
Union Territory of Lakshadweep, Lakshadweep.
3. The Administrator, Kavaratti,
Union Territory of Lakshadweep, Lakshadweep. **Respondents**

(By Advocate : Mr. S. Radhakrishnan)

This application having been heard on 20.7.2015, the Tribunal on

29.07.2015, delivered the following:

ORDER

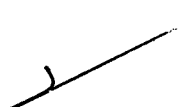
Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

The case of the applicant is stated as follows:

- 1.1. On 1.8.2006 the applicant was appointed on contract basis in the consolidated salary of Rs. 5,000/- in Reproductive Child Health Department



in the Indira Gandhi Hospital, Kavaratti. Annexure A7 is that order. The applicant continued as a contract worker without break till date and he had been deputed to other health centres as well. The applicant has been working as Lab Technician for more than one year at Indira Gandhi Hospital, Kavaratti. During 2007 the permanent vacancy of Lab Technician arose in Indira Gandhi Hospital. In the notification calling for application the age limit was specified as 18-30 with five years age relaxation in appropriate cases. By order dated 28.4.2007 the recruitment criteria was specified to the effect that 85% marks were to be obtained for the essential qualification stipulated in the recruitment rules and 15% of the total marks be assigned for desirable qualifications. Overlooking the qualification and work experience one Smt. Sahira Begum was appointed as she had obtained 0.5 marks more than the applicant. In 2009 another post of Lab Technician fell vacant. Again another post of Lab Technician fell vacant due to the retirement of Shri M.C. Mohammed. 2nd respondent published a notification to fill up that vacancy. That notification, is Annexure A12. The applicant applied for the same vide Annexure A13. No age relaxation was given. The 2nd respondent can relax the upper age limit and offer the job notified in Annexure A12 to the applicant taking into account that he has been working as Lab Technician continuously without any break from 1.8.2006. The applicant submitted a representation dated 22.9.2012 to the 3rd respondent requesting the latter to consider the applicant for regular appointment in the post notified under Annexure A12. The 2nd respondent has published the check list of the candidates who applied for the post of multi tasking employee. The applicant was not selected, noting 'age over' as per Annexure



A19. In consideration of applicant's continuous service as Lab Technician since 2006 the applicant should have been granted the appointment to the post notified under Annexure A12. Hence, the applicant contends that he is entitled for relaxation of upper age limit for the post declared under Annexure A12 and he also seeks a declaration that he is qualified and eligible for the post under Annexure A12. He further seeks a declaration that the age limit fixed in Annexure A12 is arbitrary, malafide and against precedent. He also seeks a direction to appoint him in the permanent vacancy notified under Annexure A12.


2. This application is stoutly opposed by the respondents contending as follows:-

2.1. The applicant was appointed on contract basis on a consolidated remuneration of Rs. 5,000/-. He had made an undertaking that he will not make any representation for regular appointment under the respondent. The applicant was a candidate for the regular post of Lab Technician notified during 2007. The selection to the above notified vacancy was carried out by the duly constituted selection committee. The applicant could not be selected since another candidate secured more marks than the applicant. There was only one post of Sr. Lab Technician and that was filled up on deputation from the post of Lab Technicians. As per Annexure A12 notification the age limit prescribed is 18-25 years. Age relaxation of 5 years was given to ST candidates as prescribed by the Government of India. No age relaxation can be allowed in individual cases unless a provision is

prescribed in the concerned Recruitment Rules. In the Recruitment Rules of Lab Technician there is no method of recruitment on absorption by age relaxation. The direction issued by this Tribunal in OA 634 of 2011 has no bearing on the facts of this case since that case relates to the case of casual labourers and not relating to a single individual. Not only that, the said order passed by this Tribunal has been stayed by the Hon'ble High Court in OP (CAT) 1232 of 2013.

3. In the rejoinder it is further contended by the applicant that Annexure A12 notification is silent on the aspect of test and interview or experience. The contract of appointment was extended for one year only by issuing formal orders. The applicant was indeed appointed and was working in Indira Gandhi Hospital. The applicant was sent to various other health centres to fill up the vacancies of regular Lab Technicians. Age relaxation was allowed only in desirable candidates.

4. An additional reply statement was filed contending that regular vacancies are filled strictly as per the Recruitment Rules attached to the post adhering to the other instructions related to the post. Contract appointments are made under specific conditions as a temporary arrangement. The applicant was informed that his appointment would be purely on contract basis and strictly in accordance with the terms and conditions specified for that purpose and the Department will not confer on him any claim for regular appointment and that he will be liable to be terminated on completion of the stipulated period. The applicant is not entitled to get any




relief and so the OA is to be dismissed.

5. The points for consideration are i) whether the applicant is entitled for a declaration for relaxation in the upper age limit for the post declared under Annexure A12 and ii) whether the applicant is eligible to be qualified for the post of Lab Technician shown in Annexure A12.

6. Heard the learned counsel for the applicant Mr. V.J. James and learned counsel for the respondents Mr. S. Radhakrishnan and perused the pleadings and records of the case.


7. It is vehemently argued by the learned counsel for the applicant that the applicant was appointed as Lab Technician on 1.8.2006 and since then he has been continuously working without break and so he is entitled to get age relaxation. It is also argued that he should be treated as a permanent Lab Technician. In other words, he never contends that his service should be regularized. But it is pointed out by the learned counsel for the respondents that no such relief has been claimed in this application. The applicant only contends that he has to be appointed in the permanent vacancy notified under Annexure A12 notification. The request made in the OA is for relaxation of the upper age limit for the post notified under Annexure A12. The respondents contend that the age prescribed for the post is 18-25 years. As the applicant belongs to ST community he is entitled to a relaxation of five years and so it would be up to 30 years. Admittedly the applicant is above 30 years and as such he was not shown in the check list on the



ground of over age.

8. Even according to the applicant he was appointed only on contract basis. In other words, there was no regular appointment. Annexure A7, the order as per which he was selected on contract basis is very specific and clear that his appointment is on contractual basis. As per Annexure A7 he was informed that his appointment is purely on contract basis and strictly according to the terms and conditions attached to Annexure A7 and that Annexure A7 will not confer on the applicant any claim for regular appointment. Further he was also informed that he will be liable to be terminated on completion of the stipulated period. In the terms and conditions appended to Annexure A7 it is mentioned that his appointment on contract basis is for a period of one year on short term contract (monthly wage basis). It is also mentioned that Chairman, SCOVA has full powers to terminate the contractual appointment at any time without any notice or assigning any reason. Since the applicant was appointed as Lab Technician purely on contractual basis his claim that he should be treated as a regular appointee cannot be accepted at all. The fact that even after the expiry of the period of one year he was allowed to work as Lab Technician on contract basis will not save the situation since he continued to be a contractual employee and not an employee who was selected as per the recruitment rules.

9. The learned counsel for the applicant wants to rely upon the common order passed by this Tribunal in OA 29/2013 and other connected cases. In



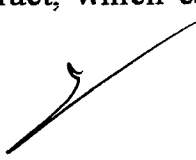
that case the applicants therein were engaged on casual basis. Even in that case it was held by this Tribunal as under:-

“However, going by the catena of decisions referred to above, it cannot be held that the applicants are entitled to get their services regularized. It has been repeatedly held by the Apex Court that there is no room for any sympathy for such casual labourers even if they have continued in service for a large number of years”.

But considering the fact that the applicants therein were working on casual basis for more than a decade it was held that the applicants are entitled to get the benefits of relaxation of age and other essential qualifications to the extent possible when fresh recruitments are being made. It is stated that the OP(CAT) filed against that common order is pending before the High Court.


10. The learned counsel for the applicants has also relied upon the decision of the Hon'ble Supreme Court in *State of Harayana & Ors. v. Piara Singh & Ors.* – 1992 (4) SCC 118 in support of his submission. In that case it was held that those eligible and qualified and continued in service satisfactorily for a long period have a right to be considered for regularization and long and continuous service gives rise to a presumption about the need for a regular post and so the Government was directed to consider the feasibility of regularization having regard to the peculiar circumstances of that case. The applicants in that case were ad hoc or temporary employees and not contractual workers.

11. According to the learned counsel for the respondents in the case on hand, it is purely a work contract, which can be discerned from Annexure



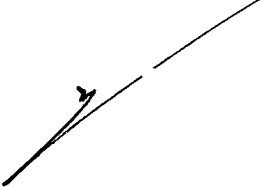
A7 itself and so the applicant cannot contend that he should be treated as an ad hoc employee or that taking into consideration of the fact that he had been working there for merely 7 or 8 years he should be regularized. Even if there is a prayer for regularization in the Original Application, the request so made cannot be countenanced at all.

12. In this connection the learned counsel for the respondents has relied upon the decision of the Hon'ble Supreme Court in *Union Public Service Commission. v. Girish Jayanti Lal Vaghela & Ors.* – 2006 (2) SCC 482. It is pointed out by the learned counsel for the respondents that there is nothing on record to show that the appointment of the applicant had been made after issuing public advertisement or that the body authorized under the relevant rules governing the conditions of service had selected the applicant. Evidently the appointment was not following the procedure prescribed under the Recruitment Rules. The appointment was not made in a manner compliant with Article 16 of the Constitution, the respondents contend. The appointment being purely contractual, the applicant cannot contend that he has acquired the status of a Government servant. It cannot be said that the applicant was governed by the relevant service rules. The very fact that the selection was not following the procedure prescribed under the Recruitment Rules would negative the contention raised by the applicant that he should be treated as a permanent employee. The contention alternatively raised by him that he is entitled to get age relaxation for the post notified under Annexure A12 is also untenable.



13. Though in *Vaghela's* case (cited supra) [2006 (2) SCC 482] the length of contractual employment may be less than the length of service of the applicant herein still that will not improve the case of the applicant since he always continued to be a contractual employee and he cannot acquire the status of a Government servant appointed following the procedure prescribed under the Recruitment Rules. The employment under the Government/the Lakshadweep Administration is a matter of status and not a contract. In the case of an appointment under the Government, the rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution. So far as the case of the applicant is concerned he was hired on contract basis to work as Lab Technician. The applicant holding such a post cannot acquire any right to continue in the post. It would be so even if the applicant continued to work in that capacity from time to time for more than a year or for years together. In *Vaghela's* case cited supra it was held by the Hon'ble Supreme Court as under:-

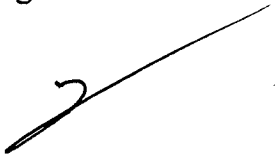
"21. The appointment being purely contractual, the stage of acquiring the status of a government servant had not arrived. While working as a contractual employee Respondent 1 was not governed by the relevant service rules applicable to Drugs Inspector. He did not enjoy the privilege of availing casual or earned leave. He was not entitled to avail the benefit of general provident fund nor was he 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 could he be transferred. Some of the minor penalties which can be inflicted on a government servant while he continues to be in government service could not be imposed upon him nor was he entitled to any protection under Article 311 of the Constitution. In view of these features it is not possible to hold that respondent 1 was a government servant."



14. Following the Supreme Court decision in *Vaghela's* case cited supra this Tribunal dismissed similar claims made by the applicants in OA No. 417/2011. That was challenged before the High Court by filing OP (CAT) No. 1295/2012. Following the decision in *Vaghela's* case cited supra the High Court confirmed the order passed by this Tribunal and dismissed the OP as per judgment dated 13.4.2012. Similar view was taken by this Tribunal in OA No. 382/2011 dated 16.11.2012 dismissing a similar claim made by the applicant therein. As said earlier the Supreme Court has held in *Vaghela's* case that a contract appointee cannot be said to be a Government servant and therefore, he is not eligible for a relaxation in upper age limit. The dictum laid down in that case was followed by this Tribunal in the cases referred to earlier.

15. After a survey of the earlier decisions on the point the Constitution Bench of the Hon'ble Supreme Court in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* – 2006 SCC (L&S) 753 held as under:

“45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not



possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term”.


It was held in paragraph 47 as under:-

“47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

It was further observed by the Hon'ble Supreme Court in paragraph 48 as under:-

“48. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution.....”

In *Umadevi (3)*'s case it was argued before the Apex Court that the State action in not regularizing the employees was not fair within the frame work of the rule of law and so it was contended that the employees should be regularized. In that context it was held by the Hon'ble Supreme Court in paragraph 49 as under:-



"49. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

16. In the light of the aforequoted authoritative pronouncement of the Constitution Bench of the Hon'ble Supreme Court and other decisions referred to above, the argument to the contrary advanced by the learned counsel for the applicant is only to be brushed aside. We have no hesitation to hold that this application lacks merit and is only to be dismissed.

17. In the result this Original Application is dismissed but without any order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

"SA"