

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 372/2006

WEDNESDAY THIS THE 6th DAY OF DECEMBER, 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER**

P.M. Sajitha W/o Mohammed Salahuddin
Staff Nurse, Community Health Centre
Agathi
Permanently residing at Pullichalil House
Pallasimangalam PO, Mavudy
UT of Lakshadweep.

Applicant

By Advocate Mr. M. R. Hariraj and P.A. Kumaran

Vs.

- 1 Union of India represented by the Secretary
Department of Health, Ministry of Health
and Family Welfare, New Delhi.
- 2 The Administrator
Union Territory of Lakshadweep
Kavarathi.
- 3 Director of Health Services
Union Territory of Lakshadweep
Kavarathi.

Respondents

By Advocate Mr. Shafik M.A. for R.2 & 3

By Advocate Mr. S. Abhilash, ACGSC for R-1

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This application is not against any particular order but raises a general claim for regularisation of the service of the applicant on the ground that she had been under contract employment since 1995 in

the Public Health Department of the U.T. Of Lakshadweep.

2 The applicant is a Staff Nurse and in 1995 she was offered a temporary post of Staff Nurse for three months by Annexure A-2 order on purely contract basis. The applicant's appointment was further subject to the condition of CCS (Temporary Service) Rules, 1965 which stipulated that the applicant's appointment could be terminated at any time without assigning any reason. Further she was taken on contract basis after expiry of 89 days after giving an artificial break of one day by order at Annexure A-3 and the contract was being extended giving one day's break after every 89 days. The relevant orders are at Annexures A-2, A-3, A-4 and A-5. It is further submitted by the applicant that she was married to a person hailing from Androth Island and is now permanently residing in that Island. She had been requesting for appointment on regular basis on the ground of permanent residence in the Island and the respondents have not considered her request so far. In the meanwhile they had issued a notification in 2003 and recently on 14.2.2006 (Annexure A-12) calling for applications for appointment to the post of Staff Nurse, the eligibility to apply for the post has been restricted in the above notification to local Scheduled Tribe candidates in the Lakshadweep Island. Hence the applicant contends that she has not been appointed on a regular basis only because she was not a local candidate. The applicant has prayed for the following reliefs:

- (i) To direct the respondents to consider the applicant for regularisation of service as Staff Nurse under the 3rd respondent and to grant her regularisation with effect from the date of initial engagement with all consequential benefits and to treat the artificial breaks in service as duty.
- ii) Alternatively to direct the respondents to consider the applicant for regular appointment to the post of Staff Nurse and grant her age relaxation to the extent of her service under the 3rd respondent.
- iii) Grant such other reliefs as may be prayed for and the court may deem fit to grant and
- (iv) grant the costs of this Original Application.

3 In the reply statement the respondents have averred that it is true that six posts of Staff Nurse were lying vacant since 1995 and there was lack of qualified local candidates with the District Employment Exchange. Therefore action was initiated to fill up the posts on contract basis in 1995 considering other than local Islanders and accordingly the applicant came to be appointed on contract basis. The appointment of the applicant and others were purely on contract basis on monthly remuneration/wages for a period of 89 days. It was clearly mentioned in the appointment order that the appointment would not confer any right for regular appointment, seniority, confirmation, etc. and is liable to be terminated at any time without assigning any reason. This position was well known to the applicant before joining the service and that none of the other candidates who were appointed along with her has submitted any representation against non-regularisation. The Lakshadweep Islands have certain peculiar conditions and the Government of India

has specifically prohibited settlement of mainlanders in the Island without permit and the Laccadive, Minicoy and Amindivi Islands (Restriction on entry and residence) Rules, 1967 are in force in the Islands. In keeping with the above laws and for protecting the special interest of the local candidates who on account of their educational and social backwardness cannot compete with the mainlanders, the Ministry of Home Affairs issued communication No. U-14014/74 -ANL dated 3.7.1975 (Annexure R-1) with regard to the appointment in the Islands. This has stipulated that appointments of mainlanders can be made only if there is no eligible candidate among the locals that too only on deputation. This issue has been agitated in many legal proceedings. Annexure R-2 judgment of the Hon'ble High Court in OP NO. 3329/1978-K dated 8.7.1980 is one such case wherein the Hon'ble High Court ruled that there is nothing illegal in such restriction in the appointment of Group-C and Group-D posts in favour of local candidates. In such circumstances, the service of the applicant and other Nurses who were appointed on contract basis cannot be regularised and the applicant has no special claim by virtue of being married to a person hailing from Androth Island. The case of teachers whose services were regularised by orders at Annexure A-14 are on different footing as they have been appointed on adhoc basis after following due procedure. The appointments on contract basis are on specific terms and conditions agreed upon and executed between the third respondent and the applicant and was given on the basis of a request made by the applicant herself for

getting contract appointment. Further, it has been submitted that the issue relating to regularisation of appointment made on adhoc, contract and temporary and casual basis have now been settled by the Hon'ble Supreme Court as per decision in the Secretary, State of Karnataka and Others Vs. Uma Devi & Others (AIR 2006 SC 1806) and that the grounds raised by the applicant are not tenable. They have also enclosed the judgment of the Hon'ble Supreme Court in SLP NO. 7710/1992 in a similar case setting aside the order of this Tribunal and holding that the appointees on adhoc and temporary basis have no right to the post and termination of the adhoc appointment was consequent upon the regular appointment being made to the post.

4 Rejoinder has been filed by the applicant again contending that the applicant has to be treated as a local candidate as she has married an Islander and the term local candidate cannot be given restrictive meaning. It is also pointed out that Annexure R-1 instructions of the Ministry of Home Affairs is not a general order under Article 16(3) of the constitution and this Tribunal has considered the issue elaborately in Annexure A-18 judgment in a batch of cases in O.A. Nos. 964/95, 486/96, 778/96, 830/96 and 1220/96 and held that an outsider cannot be excluded for recruitment under the administration. It is also contended that the judgment in Secretary, State of Karnataka and Others Vs. Uma Devi & Others (AIR 2006 SC 1806) is not applicable as the applicant was

appointed in accordance with the rules after following the regular selection process. It has also been contended that there cannot be 100% reservation for any category under the law.

5 The learned counsel Shri P.A Kumaran appeared for the applicant, Shri Shafik for Lakshadweep Administration and Shri Abhilash, ACGSC appered for Union of India. Two MAs No. 1105/2006 for amendment of the OA and No. 960/2006 for direction were also heard along with the O.A.

6 It is an admitted fact that the applicant was appointed purely on contract basis and she has been working on a monthly basis. No doubt it is true that the contractual appointment in various spells has been spread over a decade from 1995 onwards. The record goes to show that the respondents have made unsuccessful attempts to fill up the six vacancies of Staff Nurses through the local Employment Exchange and hence they had decided to continue the appointment of the applicant and others. The contention of the applicant that her appointment was made in accordance with the Rules cannot be accepted at all as merely calling for applications for making contract appointment and holding an interview cannot be equated with the regular selection procedure prescribed under the Rules. Moreover, it is not the contention that "contract" is a specific method of recruitment prescribed under the Recruitment Rules. Hence, irrespective of the continuation of the contract for a long

period, the appointment was necessarily in the nature of a contract terminable at the end of the period of contract. Hence we are of the considered view that the law ^{is} now settled by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi and Others in which the Court has very strongly pronounced its verdict against contract appointment holding that they are ab initio void and hence not eligible for regularisation. This decision is very much applicable to the case of the applicant also. In a subsequent judgment also rendered in Accounts Officer (A&I), A.P SRTC Vs. P. Chandra Sekhara Rao and Others (2006 SCC L & S 1672), Hon'ble Supreme Court has ruled that the lower courts cannot fail to consider this recent decision of the Apex Court by the Constitution Bench.

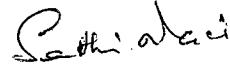
7 The applicant has prayed in M.A. 1105/06 filed for amending the O.A. for inclusion of a challenge against Annexure R-1 instruction of the Ministry of Home Affairs and to declare that Annexure R-1 is ultravires of the Constitution. The argument that the applicant's services were not regularised because she was not a native of the Island is a presumption put forth by the applicant which is not supported by records. It is not the applicant's case that the respondents have rejected her regularisation on that ground in which case perhaps the amendment of the O.A. on that ground would have been maintainable. Since the applicant had referred to such a possibility, the respondents have enclosed Annexure R-1. Apart

from that there are no such pleadings by the respondents that the case of the applicant could not be considered as she is not a local candidate and that she would have been otherwise eligible to be regularised. In fact, the case of the applicant is a pure and simple one of a contract employee seeking regularisation. We do not find any merit in the argument particularly in the light of the settled law by Hon'ble Supreme Court in the judgments cited above. In the result, the O.A. along with the M.As are dismissed. No costs.

Dated 6.12.2006



DR. K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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