

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 12 DEC 1988

APPLICATION NO. 1148 / 88(F)

W.P. NO. _____ /

Applicant(s)

Dr V. Pushpakantha
To

1. Dr V. Pushpakantha
C/o Shri O. Sreedharan
Advocate
Indira Mahal Lodge
5th Main Road, Gandhinagar
Bangalore - 560 009

2. Shri O. Sreedharan
Advocate
Indira Mahal Lodge
5th Main Road, Gandhinagar
Bangalore - 560 009

3. The Welfare Commissioner
Labour Welfare Organisation
for Karnataka & Kerala
Govt. of India
75, Millers Road 1st Floor
Vasantha Nagar
Bangalore - 560 052

V/s The Welfare Commissioner, Labour Welfare
Organisation, Bangalore & 2 Ors

4. The Secretary
Ministry of Labour
Sharma Shakti Bhawan
New Delhi - 110 001

5. Dr D.A. Nalini Eswari
Medical Officer
Beedi Workers Welfare Fund Dispensary
Tellicherry
Kerala

6. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~EX-104/EX-105/EX-106~~
passed by this Tribunal in the above said application(s) on 6-12-88.

9/12/88
Encl : As above

Joe
SECTION OFFICER
~~EX-104/EX-105/EX-106~~
(JUDICIAL)

9/12

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 6TH DAY OF DECEMBER, 1988

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
and
Hon'ble Shri P. Srinivasan, Member (A)

APPLICATION NO. 1148/1988

Dr. V. Pushpakantha,
d/o late P. Venugopal,
major, Medical Officer,
Central Hospital,
Iron/Manganese/Chrome Ore Mines,
Labour Welfare Organisation,
Kariganur, Bellary District.

.... Applicant.

(Shri O. Sreedharan, Advocate)

v.

1. The Welfare Commissioner,
Labour Welfare Organisation
for Karnataka, Kerala,
Government of India,
75, Millers road I floor,
Vasanthanagar, Bangalore-52.

2. Union of India,
by its Secretary,
Ministry of Labour,
New Delhi.

3. Dr. D.A. Nalini Eswari,
Medical Officer,
Beedi Workers Welfare fund
Dispensary, Tellicherry,
Kerala.

.... Respondents.

(Shri M. Vasudeva Rao, C.G.A.S.C.)

This application having come up for hearing to-day,
Vice-Chairman made the following:

ORDER

This is an application made by the applicant under
Section 19 of the Administrative Tribunals Act of 1985
(SC).

2. Dr. V. Pushpakantha, a member of a Scheduled
Caste (SC) is an MBBS. In Memorandum No.24(1)/4/C-1/82



dated 24.4.1987 (Annexure-A) the Welfare Commissioner, Welfare Organisation, Ministry of Labour, Government of India, Bangalore (Commissioner) - respondent no.1 appointed the applicant as a Medical Officer on ad hoc basis on the terms and conditions stipulated in that order. In pursuance of that and a later order made thereto, the applicant reported for duty on 25.7.1987 at Kariganor where she was working. In office order no. 24(1)/1/C-1/87 Col.II dated 14.6.1988 (Annexure-B) the Commissioner has posted one Dr.(Ms.) D.A. Nalini Eshwari in the place of the applicant and has terminated her services from 29.7.1988 on which day the former joined the post. In this application made on 12.8.1988, the applicant has challenged the order dated 14.6.1988 of the Commissioner terminating her services and has sought for appropriate directions.

3. In justification of the impugned order respondents 1 & 2 have filed their reply and have produced their records. Respondent no.3 who has been duly served has remained absent and is unrepresented.

4. Shri O. Sreedharan, learned counsel for the applicant contends that the termination of the applicant, who was a member of a SC without extending the benefit of the age relaxation allowed to members of SC's by the general and the special orders made thereto printed on page 69 of the 7th Edition of Brochure on Reservation for Scheduled Castes and Scheduled Tribes in Service, published by the Government of India, (Brochure) was illegal and invalid.

5. Shri M. Vasudeva Rao, learned Additional Central Government Standing Counsel, appearing for ~~the~~ respondents 1 & 2 sought to support the impugned order.

6. In the order of termination itself the reason for termination is not set out. But in their reply, respondents 1 & 2 have stated (vide para 4) that as on the date of her very appointment itself, the applicant was overaged and therefore, her initial appointment itself was illegal and the same had been rectified in the impugned order.

7. In the case of the Welfare Organisation, there was an earlier general order made by, Government on 2.1.1986 (Annexure-R1) relaxing the age limit for recruitment of Doctors in the organisation, which reads thus:-

"No.12026/19/83-CHS.I
Government of India
Ministry of Labour
Ministry of Health &
Family Welfare
(Department of Health)

New Delhi, dated the 2.1.1986

To

The Director
Ministry of Labour, New Delhi.

Subject: Appointment of Medical Officers on contract (Monthly wage) basis.

Sir,

I am directed to refer to your letter No.12025/19/83-WI-WV dated 19th August, 1985 on the subject mentioned above and to say that keeping in view the difficulties expressed in your letter referred to above this Ministry has decided to raise the maximum age limit upto 40 years for making appointment of Medical Officer on monthly wage (contract) basis, in the organisations under the control of Ministry of Labour.



Yours faithfully,
sd/-
(HASIB AHMED)
Under Secretary."

Shri Rao does not dispute that this is a general order made for all those recruited in the organisation. This general order relaxing the age limit to all must be read with the special order made by Government further relaxing the age limit specially to members of S.C. & S.T. and that made by Government in its resolution dated 25.6.1952 printed as para 6.1 at page 69 of the Brochure reads thus:-

"Direct Recruitment:

The maximum age-limit prescribed for direct recruitment to a service or post shall be increased by 5 years in the case of candidates belonging to Scheduled Castes and Scheduled Tribes."

In terminating the services of the applicant, the Commissioner had not applied this beneficial provision made in favour of members of S.C. & S.T. as he was bound to.

8. When the applicant was appointed she was obviously appointed as a member of S.C. extending the higher age relaxation available to members of SC & ST. If that is so, then ~~that~~ the initial appointment of the applicant was a legal and valid order. On this it follows, that the ground for termination of the applicant, was not legal. On this conclusion, we have to necessarily quash the termination order and direct the continuance of the applicant on an ad hoc basis as before.

9. Shri Sreedharan urges that we should also direct the respondent nos. 1 & 2 to consider the case of the applicant for regularisation instead of continuing her services on ad hoc basis.

10. Shri Rao urges that this prayer is not founded on the pleadings.

11. In her application, the applicant had not sought for a direction to consider her case for regularisation. On this prayer now made there are really no pleadings. In the absence of pleadings it will be improper for us to consider this prayer of Shri Sreedharan. We therefore decline to examine and decide the same. But this does not prevent the applicant from approaching the authorities to seek for the same, which we hope and trust, will be considered with sympathy without unnecessarily driving the applicant with another application.

11. Shri Rao urges that till the applicant is given a fresh appointment order for which a reasonable time be granted we should deny the salaries if any due to the applicant on the ground that she had not rendered public service.

12. Shri Sreedharan opposes the same and urges that we should direct the respondents to make payment of all salaries due to the applicant.

13. We are of the view that the submissions made by Shri Rao is well founded. We see no justification to direct the payment of salary to the applicant who has not rendered service till she is



reinstated to service. We also consider it proper to grant time till 31.12.1988 for reinstatement.

14. In the light of our above discussion, we make the following orders and directions:

- 1) We quash the impugned office order no.24(1)/1/C-1/87-Vol. II dated 14.6.1988 in so far as it relates to the termination of the applicant.
- 2) We direct the respondent nos. 1 and 2 to reinstate and give a posting to the applicant on such terms and conditions as may be decided by them, with all such expedition as is possible and in any event without fail from 1.1.1989. But till then, the applicant need not be paid any salaries.

15. Application is disposed of on the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

16. Let this order be communicated to all the parties immediately.

TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Mr/Mrs.

12/1
Sd/-
VICE-CHAIRMAN O/1

11-189
Sd/-
MEMBER (A)