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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.77/97

Date of order: 13/9/2000

Fishan Lal Sain, S/o Shri Ram Kishore Sain, E/o Kishore Hair Dresser, Dausa, now-a-days Nursing Ardali, O/o Sr.Medical Officer (P&T) Dispensary No.2, Jaipur.

...Applicant.

Vs.

1. Union of India through the Sr.Superintendent of Post Offices, Jaipur City, Jaipur.
2. The Sr.Medical Officer (P&T), Dispensary No.2, B-55, Yash Path, Tilak Nagar, Jaipur.

...Respondents.

Mr.S.K.Jain - Counsel for applicant.

Mr.M.Rafiq ) - Counsel for respondents.

Mr.Hemant Gupta)

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Hawani, Administrative Member

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to regularise the services of the applicant on the post of Nursing Ardali and not to disengage the applicant. Further directions are also sought to give regular scale of pay to the applicant as are granted to regular employees working as Nursing Ardali and salary from September 96 and also the seniority from the date of joining.

2. In brief facts of the case as stated by the applicant are that he was initially appointed as Nursing Ardaly for 90 days w.e.f. 29.9.83 after sponsoring his name from Employment Exchange. The services of the applicant were extended from time to time vide orders at Annxs.A1, A2 and A3. It is also stated that the services of the applicant were terminated after April 1985 and one Shri Lal Chand Meena was appointed

in his place. It is stated that the applicant was again reinstated in September 1986 and he worked upto November 87. Thereafter the applicant fell ill and the services of the applicant were terminated verbally. The applicant filed O.A No.148/90 which was decided on 12.9.94 with the directions to the respondents to engage the applicant as and when there is a vacancy and for wages, directions were given to the applicant to file an application under Sec.33-C(2) of the I.D Act before the competent authority but after the order dated 12.9.94, the applicant was not engaged although there was vacancy. The applicant filed Contempt Petition No.134/95 but in the reply it was stated that the applicant was engaged on 3.11.95, therefore, the contempt petition was dismissed vide order dated 11.1.96. But again the services of the applicant were disengaged, and he filed another Contempt Petition No.29/96 and in the reply to the contempt petition the respondents have admitted to engage the applicant on 17.2.96 therefore, the Contempt Petition was decided on 22.11.96. It is further stated that the applicant has completed the services of 240 days or more, therefore, he is entitled to regularisation and benefits of regular pay scale on the post of Nursing Orderly and the action of the respondents not granting the aforesaid benefits to him is in violation of the doctrine of equal pay for equal work and Articles 14 and 16 of the Constitution of India. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it is stated that the applicant was initially engaged as substitute, purely on temporary basis and on daily wage basis in place of Shri Lal Chand Meena, whose services were terminated which is under challenge. It is stated that a award was given in favour of Shri Lal Chand Meena thereafter the respondents had challenged the award before the Rajasthan High Court by way of S.B. Civil Writ Petition No.3209/96 which was dismissed in limine vide order dated 21.8.96. It is further stated that Shri Lal Chand Meena thereafter filed S.B. Civil Writ Petition No.5711/96 before the Rajasthan High Court for implementing the award dated 23.11.95 and thereafter Shr Lal

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Chand Meena was reinstated in service, who is continuing on the post. It is further stated that there is no other post of Nursing Ardaly available in the department. It is also stated that Shri Lal Chand Meena was appointed after following due process of selection and the applicant was engaged time and again as per requirement of work as an outsider purely on temporary and daily wage basis, therefore, the applicant cannot claim regularisation on this ground and the applicant has no case for interference by this Trikunal. Therefore, this O.A is devoid of any merit liable to be dismissed.

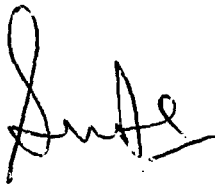
4. Heard the learned counsel for the parties and also perused the whole record.

5. On the perusal of the reply filed by the respondents it appears that the applicant worked on daily wage basis as per requirement of work purely as stop gap arrangement for the following period:

- (a) 26.2.87 to 6.3.87
- (b) 8.6.87 to 10.10.87
- (c) 11.3.88 to 4.12.89
- (d) 26.11.90 to 20.3.91
- (e) 28.3.92 to 24.9.92
- (f) 30.10.95 to 30.1.96

6. The learned counsel for the applicant has argued that in view of the satisfactory services rendered by the applicant, the applicant is entitled to regularisation. The learned counsel for the respondents has objected to this argument and submitted that the applicant was engaged on daily wage basis purely as stop gap arrangement in place of Shri Lal Chand Meena, whose services were terminated which is under challenge and he may be reinstated at any time if he succeeds the case.

7. The law on the subject of regularisation is well settled. Regularisation can be made in pursuance to a scheme and against a permanent vacancy. Working on a post for number of years on ad hoc/ temporary/work charge basis does not give any right for regularisation on the post.



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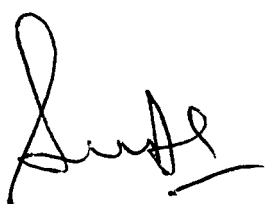
8. In UCI Vs. E;hishankher Lutt, 1997 300(L&S) 418, it was held by the Supreme Court that appointment on regular basis is a condition precedent for regularisation and a person appointed as part-time employee de hors rules are not entitled to regularisation even though regularly working for long period.

9. In E.Rama Frishna & Ors Vs. State of Kerala, (1996) 10 SCC 565, it was held by the Supreme Court that appointee de hors the rules are not entitled to regularisation even though they have officiated for long period of 14 years.

10. In State of Himachal Pradesh Vs. Suresh Kumar Verma, JT 1996(2) SC 455, Hon'ble Supreme Court has affirmed the same view.

11. In the instant case, the respondents have categorically made it very clear that the applicant was allowed to work on daily wage basis on purely temporary basis as stop gap arrangement as a substitute in place of Lal Chand Meena, whose services were terminated and he challenged the order of termination and in pursuance of an award, he was reinstated in service w.e.f 17.3.97. On a perusal of the reply it appears that in compliance of the award, Shri Lal Chand Meena has joined the post of Nursing Ardialy and he is continuing on the post. Therefore, in view of the settled legal position and facts and circumstances of this case, I am of the considered view that the applicant failed to make out any case for his regularisation.

12. The learned counsel for the applicant has also argued that the applicant is entitled to regular scale of pay on the basis of the principle of 'equal pay for equal work'. But the applicant has failed to make out any case so as to establish the fact that he is entitled to the pay of regularly employed Nursing Ardialy. The principle of 'equal pay for equal work' can be enforced only when the person claiming the same satisfy the Court/Trikunal that not only the nature of work is identical but in all other respect he belongs to the same class and there is no apparent reason to treat the applicant as unequal unless a clear reason is made out and the court is satisfied that the person is being case is made out and the court is satisfied that persons are being treated



discriminatedly, the court should not issue any writ order or direction to treat him equal.

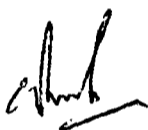
13. In State of Tamil Nadu & Anr. Vs. M.R.Alagappan & Ors, JT 1997(4) SC 515, it has been held as follows:

"That person claiming parity in pay on the principle of equal pay for equal work must show that his qualification, duties and functions are similar to person with whom he claims parity"

14. In view of the legal position as above and the facts and circumstances of the case, the applicant even on merit has failed to make out any case for equal pay for equal work.

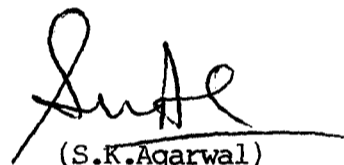
15. In view of the above, we are of the considered view that the applicant fails to make out any case for regularisation and equal pay for equal work as claimed by him.

16. We, therefore, dismiss the O.A with no order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).