

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 12th day of October, 2006

ORIGINAL APPLICATION No. 20/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

Smt. Ammini P.T.
w/o Shri Tulsi Dhar,
r/o 70/305, Pratap Nagar,
Sheopur Sanganer, Jaipur,
Presently working as Staff Nurse,
P&T Dispensary No.2,
Tilak Nagar, Jaipur

.. Applicant

(By Advocate: Mr.C.B.Sharma)

Versus

1. Union of India
through the Secretary
to the Govt. of India,
Ministry of Communication
and Information Technology,
Dak Bhawan,
New Delhi.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Chief Medical Officer,
P&T Dispensary No.2,
Tilak Nagar,
Jaipur

.. Respondents

4. Senior Superintendent of Post Offices,
Jaipur City,
Postal Division,
Jaipur.

(By Advocate: Mr. Gaurav Jain)

O R D E R (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- “i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to regularize services of the applicant on the post of Staff Nurse or any other suitable post with all consequential benefits.
- ii) That the respondents further directed to relax condition which deprived the applicant in regularization and further to allow at least benefits of allowances i.e. HRA/CCA etc. with all consequential benefits.
- iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- iv) That the costs of this application may be awarded.”

2. Briefly stated, facts of the case are that the applicant was engaged as Staff Nurse (Non-resident) on daily wage basis in the P&T Dispensary, Jaipur on 17.9.85. She is still continuing in that capacity. It is also not disputed that the applicant has passed 1st pre-degree examination from the University of Kerala and final examination from the International Nursing Institute, Tiruvalla, Kerala State and she has completed the course of Nursing and Midwifery. Since the services of the applicant was not regularized, as such, she filed OA No.161/90 before this Tribunal thereby praying that she is entitled to regular

appointment as Staff Nurse in the P&T Dispensary No.2, Tilak Nagar, Jaipur with all consequential benefits. The said OA was decided on 8.12.1994 with the direction to the respondents to consider the case of the applicant for appointment as Staff Nurse on regular basis in accordance with recruitment rules of 1978 as and when recruitment to the said post on regular basis is made. From the material placed on record, it is clear that in the light of the direction given by this Tribunal the case of the applicant for appointment on the post of Staff Nurse (Non-resident) was examined and it was found that the applicant does not fulfill the condition required for appointment to the post of Staff Nurse as laid down in the recruitment rules. It is further clear from the material placed on record that keeping in view the fact that the applicant has worked with the Department for considerable long time the Chief Postmaster General, Jaipur referred the case of the applicant to the Director General, Department of Posts, New Delhi for approval of the Directorate to grant her temporary status treating her as full time Casual Labour in P&T Dispensary, Jaipur vide letter dated 28.10.2004 (Ann.A6). In the said letter the fact that the applicant does not fulfill the requisite qualification as per recruitment rules for the post of Staff Nurse has also been indicated. In the said letter it has also been mentioned that the record pertaining to the

year 1985 whereby the applicant was engaged as Staff Nurse on daily wage basis are not now available/traceable by the Regional Office, Ajmer, as such, it is not possible to say as to how the applicant was appointed on daily wage basis when she does not possess the requisite qualification for the said post. Accordingly, case of the applicant was referred for approval of the Directorate for relaxation in condition for appointment on regular basis either on the post of ANM in P&T Dispensary No.1, Jaipur or Non-resident Nurse in P&T Dispensary No.1, Jaipur. It was further mentioned that if the minimum qualification is not relexable, approval of the directorate may be conveyed to grant her temporary status treating her as full time casual labour in P&T Dispensary. The matter was examined at Directorate level in consultation with the Department of Personnel and Training. The DoPT has not agreed to the proposal as the applicant does not possess the mandatory educational qualification/experience. It was observed that it will be inappropriate to regularize services of the applicant without proper experience for the post of Staff Nurse. The suggestion of the Chief Post Master General as made vide Ann.A6 regarding grant of temporary status to the applicant was also turned down on the ground that Casual Labour (Grant of Temporary Status and Regularisation) Scheme is not applicable for persons working in Group 'C' post. The respondents

have placed copy of letter dated 19.4.2006 on record as ann.R1.

3. Notice of this application was given to the respondents. The respondents have filed reply.

4. The applicant was granted opportunity to file rejoinder. However, no rejoinder is filed.

5. I have heard the learned counsel for the parties and gone through the material placed on record. I am of the firm view that the applicant is not entitled to any relief. From the material placed on record, it is clear that the applicant was engaged as daily wager against the post of Staff Nurse (Non-resident) in the P&T Dispensary No.2, Jaipur w.e.f. 17.9.85 though she did not possess the requisite qualification laid down in the recruitment rules for the said post. Even the relief of regularization of service of the applicant as Staff Nurse on the basis that she has been engaged as Staff Nurse on daily wage basis w.e.f. 17.9.85 was declined by this Tribunal in the earlier OA decided on 8.12.1994. The limited relief which was granted to the applicant was that her case may be considered for appointment to the said post on regular basis in accordance with the Recruitment Rules of 1978. Admittedly, the applicant does not possess requisite qualification meant for the post of Staff Nurse, as

such, no relief can be granted to the applicant to regularize her services on the post of Staff Nurse in view of the finding recorded by this Tribunal in the earlier OA. However, the prayer of the applicant that respondents may be directed to relax the condition which deprived the applicant for regularization of her services cannot be accepted in view of the decision rendered by this Tribunal vide order dated 8.12.1994 in earlier OA whereby direction has been given to consider case of the applicant in accordance with Recruitment Rules of 1978 and no direction has been given by the Tribunal in the earlier OA that in case the applicant is not entitled for appointment on the post of Staff Nurse on regular basis in accordance with Recruitment Rules of 1978 in that eventuality, her case may be considered granting relaxation in educational qualification under the Recruitment Rules of 1978. Even otherwise also, the matter on the point whether direction can be given to regularize services of the applicant dehors the rules is no longer res-integra. The same stand settled by the decision of the Constitution Bench of the Hon'ble Apex Court in the case of Secretary, State of Karnataka and others vs. Uma Devi and others, 2006 (3) SLR 1. The Hon'ble Apex Court while noticing the views and to give quietus to the controversies through the opinions expressed by different decisions, the matter was referred to the Constitution Bench. The Constitution Bench while

noticing the conflicting opinions given by different benches in no uncertain terms held that any appointment made in violation of the statute or in derogation of the equality clause contained in Article 14 and 16 of the Constitution would be void and of no effect. It was opined that such illegal appointees were not entitled to claim regularization. The Constitution Bench in Umadevi's case in regard to temporary employees has opined as under:-

“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 Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Article 14 and 16 of the Constitution are therefore overruled.

It was further stated that:-

“.... The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. 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 Article 14 and 16 of the Constitution.”

It was further held that:-

“There have been decisions which have taken the cue from the Dharwad case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in recent decision in The Workmen vs. Bhurkunda Colliery of Central Coalfields Ltd though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent.”

In National Fertilizers Ltd. And Ors. vs. Somvir Singh, JT 2006 (11) SC 279, it was held that:-

“Regularization, furthermore, is not a mode of appointment. If appointment is made without following the rules, the same being a nullity the question of confirmation of an employee upon the expiry of the purported period of probation would not arise.”

It was also held that:-

“It is true that the respondents had been working for a long time. It may also be true that they had not been paid wages on a regular scale of pay. But, they did not hold any post. They were, therefore, not entitled to be paid salary on a regular scale of pay. Furthermore, only because the respondents have worked for some time, the same by itself would not be a ground for directing regularization of their services in view of the decision of this Court in Uma Devi.”

6. Thus, in view of the law laid down by the Constitution Bench in the case of Uma Devi (supra), the applicant has no legal right to be regularized in service. The applicant was admittedly engaged against the post of Staff Nurse on daily wage basis though she

did not fulfill the requisite qualification prescribed in the Recruitment Rules. Since the applicant was engaged as Staff Nurse even on daily wage basis though she did not possess requisite qualification meant for the post, her engagement was dehors the rules. In the absence of any legal right and in view of the law laid down by the Apex Court, the applicant is not entitled to any relief.

7. Before parting with the matter, it may be stated that the applicant was allowed to continue as Staff Nurse (non-resident) on daily wage basis against the vacancy of Staff Nurse even after the judgment rendered by this Tribunal in earlier OA decided on 8.12.1994, This fact proves that work is available with the department and it will be highly inequitable if the services of the applicant who by this time has put in about 20 years of service is dispensed with simply because this Tribunal has declined grant of relief for regularization on the post of Staff Nurse to the applicant. It is further clarified that the applicant may be allowed to continue in the said capacity till the post of the Staff Nurse is filled up in the light of the observation made by the Apex Court in the case of Uma Devi (supra) or such time till the work of the nature which the applicant performed is still available with the respondents, whichever is earlier.

8. With these observations, the OA is disposed of with no order as to costs.



(M.L.CHAUHAN)

Judicial Member

R/