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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH,  
CHANDIGARH.**

O.A.No.060/00198/2014

Date of Decision : 2.12.2014

Reserved on: 20.11.2014

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER  
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Ms. Mrinalini Sharma, daughter of Sh. Anil Sharma, age 27 years working as physiotherapist in Department of Physical Medicine and Rehabilitation (PMR) in the Government Medical College & Hospital, Sector 32, Chandigarh.

Applicant

Versus

1. Union of India through Secretary, Ministry of Health and Family Welfare, New Delhi.
2. The Secretary, Health and Family Welfare, U.T. Chandigarh, U.T. Secretariat, Deluxe Building, Sector 9, Chandigarh.
3. The Director Principal, Government Medical College & Hospital, Chandigarh, Sector 32-C, Chandigarh.

Respondents

Present: Mr. D.R.Sharma, counsel for the applicant

None for respondent no.1

Mr. K.K.Thakur, counsel for respondents no.2 & 3.

**ORDER**

**HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) That the respondents be directed to regularize the services of applicant as Physiotherapist in terms of MOU entered between respondents No. 1 & 2 (Annexure A-2).

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- (ii) That action of the respondents in resorting to making direct recruitment on the post of Physiotherapist instead of regularizing the services of applicant be declared unsustainable and unjustified.
- (iii) That the respondents be directed to take applicant under 'Direct Contract under GMCH' against the vacant post of Physiotherapist as has been recommended by her office vide Annexure A-16 and as has been done in the case one Dr. Ravi Kumar Preenja who was also appointed under the Scheme on the post of Assistant Professor in the Department of PMR, GMCH, Chandigarh.
- (iv) That the respondents be directed to allow the applicant continue on the post of Physiotherapist on which she is continuously working since 16.12.2010 to till date.
- (v) That the respondents be directed to release the salary of the applicant which has not been paid since 01.04.2012, alongwith interest @18% p.a."

2. Averment has been made in the OA that the applicant is working as Physiotherapist in the Department of Physical Medicine and Rehabilitation (PMR) in the Government Medical College & Hospital, Sector 32, Chandigarh, since 16.12.2010, pursuant to her appointment vide letter dated 09/14.12.2010. (Annexure A-4). It is also stated that during the 11<sup>th</sup> Five Year Plan the Government of India introduced a certainly sponsored Scheme known as "Upgradation of facilities in the Department of Physical Medicine & Rehabilitation (PMR) in Medical Colleges" (for short Scheme). The Scheme is to organize and undertake training of the medical graduates and postgraduates in the field of Physical Medicine & Rehabilitation, besides, augmenting PMR services at primary, secondary and tertiary level of the health care delivery system. For the implementation of the Scheme, Govt. of India provided funds at the initial

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stage to the identified medical colleges for procurement of equipment, hiring of contractual staff and minor civil work etc as per the Guidelines of the Scheme and thereafter all the liabilities including that of manpower vest in the medical colleges. The Government Medical College, Sector 32, Chandigarh was identified under the Scheme and funds were released directly to Principal as is evident from letter dated 13.04.2009 sent by respondent no.1 to respondent no.2 (Annexure A-1). Copy of Memorandum of Understanding (MOU) between Ministry of Health & Family Welfare, Government of India and the Government of UT, Chandigarh, is annexed as Annexure A-2.

3. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The applicant is continuously working since 16.12.2010 till date against the sanctioned post and her work and conduct is very good as is evident from the Certificates and recommendations issued by the office vide Annexure A-9, A-15 and A-17, her period of contract has been extended upto 31.03.2014 eligible for regular appointment. From Advertisement (Annexure A-3) and appointment order dated 09/14.12.2010 (Annexure A-4) it was evident that the appointment of the applicant, through a positive act of recruitment and selection, is under the "Scheme" and the Government of India was to provide funds to College only initially during the 11<sup>th</sup> Five Year Plan i.e. upto 31.03.2012, and thereafter all the liabilities including that of contractual staff by taking steps before 31.03.2012 to engage manpower on permanent basis for running their Department of PMR and creating regular posts was / is to be met by the respondent College so that at the end of 11<sup>th</sup> Five Year Plan period i.e. 31.03.2012, necessary posts exist for smooth continuation of PMR services. Even respondent No.1 vide letter dated 17.10.2011 (Annexure A-5) asked respondent No. 2 to confirm that the necessary action was taken to create regular posts



against contractual positions for smooth continuation of PMR services as per Clause 8 of MOU as the 11<sup>th</sup> Five Year Plan was to end on 31.03.2012. Thus action of respondents No. 2 and 3 in not making the regular appointments since 31.03.2012 and putting the sword of Damocles on the applicant is not justified. Instead of appointing on regular basis, for the initial contractual appointees like the applicant, the period of contractual appointment is being extended from time to time.

- iii) The services of one Dr. Ravi Kumar Preenja, who was earlier working as Assistant Professor in PMR had been renewed against the regular sanctioned post of Assistant Professor in the Department of PMR, GMCH, Chandigarh after the approval of SMER vide order dated 20.09.2013 and admittedly the posts of Physiotherapist in the Department of Orthopedics are vacant and in the interest of patient care the office recommended the transfer / shifting of the applicant from contractual appointment of Scheme to 'Direct Contract under GMCH' but still the respondents are neither making the regular appointments in terms of MOU entered between respondents No. 1 & 2 (Annexure A-2) nor taking the applicant under 'Direct Contract under GMCH'.
- iv) Instead of making regular appointment in terms of MOU entered between respondents No.1 and 2 (Annexure A-2) the action of the respondents in resorting to making direct recruitments vide Annexure A-13 is not sustainable. Present one is not a case of back door entry as the applicant has been appointed by a positive act of selection, and therefore, relieving her at the end of period/s of contract, reappointing after giving break-in service and depriving her of the salary of break period is wholly illegal and un-warranted and against the settled law.
- v) Since 01.04.2012 the salary has not been paid to the applicant. Even respondents No.2 & 3 requested respondent No.1 to release the funds for arrears of revised pay w.e.f. 01.05.2008 to 30.09.2010 and budget for salary w.e.f. 01.04.2012 to 31.03.2013 and 2013-2014.
- vi) This Tribunal in two different significant decisions analyzed the whole law of ad-hocism stop gap and contractual system in detail relying upon various judgments of the Hon'ble Supreme Court, firstly in the case of "Krishan Kumar Vs. UT, Chandigarh & Ors.", reported as 2004(3) SLJ Page-227, and

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in the case of "Sonika Kholi Vs. UOI", 2004(3) SLJ page-54, have held the contract appointees to the minimum of the pay scale as admissible to the regular ones including the salary for the period of vacations and artificial breaks.

- vii) The applicant was appointed through proper selection process, therefore, she is entitled to be continued on the post till the regular incumbent is appointed by the respondents. There is requirement of work and posts are still lying vacant in the college/s. Therefore, the applicants have legitimate expectations to continue on the post in view of the decision taken by this Court in the case of "Ramphal Vs. Chandigarh Administration and Others" in O.A.No.538/ CH/2010, decided on 17.02.2011, O.A. No.33/CH/2011 titled "Vandana Jain and Others Vs. Union of India and Others", decided on 31.3.2011, "Sanjay Kumar and Others Vs. Chandigarh Administration and Others" in O.A. No.609-CH-2010 and "Dr. Harpreet Kaur and Anr. Vs. Chandigarh Administration & Others", decided vide Common Order dated 10.02.2011, decided on 10.2.2011. This Tribunal has already deprecated the action of the Chandigarh Administration in the case of Guest Faculty Teachers wherein the Administration was relieving them after the completion of the academic session and was recruiting another batch through fresh admission procedure in the beginning of the session.

4. In the written statement filed on behalf of the respondents, it has been stated that the applicant was given temporary appointment to the post of Physiotherapist in the Department of Physical Medicine & Rehabilitation (PMR), GMCH-32, Chandigarh, purely on contract basis on a consolidated fixed remuneration / emoluments of Rs.17,000 per month under the Centrally Sponsored Scheme i.e. 'Upgradation of Facilities in PMR, in Medical Colleges'. As per appointment order issued to applicant, it has been clearly mentioned in terms and conditions Clause No.9 that "the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any

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post in this college i.e. GMCH". The salary to the contractual employees under the PMR Scheme has not been paid because the Director General Health Services, Govt. of India, New Delhi has not released the funds. However, as and when the same will be received from concerned authority, the salary will be released. The Govt. of India has extended the PMR Scheme for the year 2014-15 vide letter No. G-20017/6/2014-MH-II dated 28<sup>th</sup> March, 2014. The tenure of Ms. Mrinalini Sharma has already been extended for further period of 06 months till 30.09.2014 by the GMCH vide order No. 10086-95 dated 11.06.2014.

5. Substantial case law has also been cited to press that the service of an employee can be terminated in terms of the conditions of her engagement and on the expiry of employment / contract period the right to remain of the post comes to end:

- i) Institute of Management and Development U.P Vs. Smt. Pushpa Srivastava, 1992 (3) SCT, 742.
- ii) State of U.P. Vs. K.K. Shukla, 1991 (1) SCT 760.
- iii) State of Punjab Vs. Surinder Kumar, JT 1991 (6) SC, 540.
- iv) S.K. Verma Vs. State of Punjab etc. 1979 (2) SLR, 164.
- v) Harjot Kamal Singh Vs. State of Punjab. 1997 (1) RSJ, 96.
- vi) Kiran Bala & Ors. Vs. State of Punjab, CWP No. 7361 of 1996, decided on 22.05.1996; and
- vii) Anil Kumar etc. Vs. State of Haryana etc. 2000 (3) ATJ, Page 150.

6. No rejoinder has been filed on behalf of the applicant.





7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant pressed that the services of the applicant should be regularized as the post on which she was working was required in the future also by the respondent Department and since she had been appointed through a proper process of selection her services should be regularized. Reference was also made to the content of the MOU (Annexure A-2). Respondent no.3 had sent proposals to Ministry of Health and Family Welfare, Govt. of India for creation of 18 posts including that of Physiotherapist but sanction regarding the same was still awaited, although the Ministry and the Chandigarh Administration were parties to the MOU wherein there was provision for creation of the regular posts. Learned counsel pressed that the salary of the applicant had not been paid since 31.03.2012 and the applicant was facing real hardship on this account.

8. Learned counsel for the respondents stated that the salary had been paid to some of the persons employed under the Scheme as per funds availability and reference had also been sent to the Ministry of Health and Family Welfare for release of funds so that the applicant could also be paid. Learned counsel also stated that as per the terms and conditions of the appointment letter, the applicant could not have any claim for regularization against the post on which she had been appointed on contract basis and she would have to take her chance for selection if and

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when the posts under the Scheme were created on regular basis and action initiated to fill the same.

9. We have carefully considered the matter. Since there is a clear commitment on the part of the respondents as per the written statement that the payment due to the applicant shall be made as and when funds are released for this purpose by the Ministry of Health and Family Welfare, Govt. of India, this assurance is accepted and the respondents are directed to ensure that the due salary of the applicant is released before 31.03.2015. So far as the claim for regularization of the applicant as Physiotherapist is concerned, it is seen that the posts under the Scheme have not yet been created in the GMCH. As and when these posts are created and action initiated to fill these on regular basis, the claim of the applicant for appointment against the post of Physiotherapist may be considered on merits along with that of other applicants for the post. OA is disposed of accordingly. No costs.

**(RAJWANT SANDHU)**  
**ADMINISTRATIVE MEMBER.**

**(DR. BRAHM A. AGRAWAL)**  
**JUDICIAL MEMBER**

Place: Chandigarh  
Dated: 2-12-2014

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