CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 783/2015

New Delhi this the 19th day of October, 2016.

HON'BLE MR. JUSTICE M.S.SULLAR, MEMBER (J)
HON'BLE DR.BIRENDRA KUMAR SINHA, MEMBER (A)

1. Mani Kumari, Aged 32,
Staff Nurse (Contractual),
W/o Shri Sanjeev Kumar,
A-196 197, Manglapuri Phase-2,
Palam Colony, New Delhi-110 045

2. S.Niangkanching, Aged 40,
Staff Nurse (Contractual),
D/o Shri S.Chintual,
House No.82/1, Ground Floor,
Nanak Pura, (Tara Vaishno Dhaba),
Near Gurudwara, Moti Bagh,
New Delhi-110021.

3. Paramjeet Kaur, Aged 41,
Staff Nurse (Contractual),
D/o Shri T.S. Walia,
A-4, 2nd Floor, Swaran Singh Road,
Adarsh Nagar, Delhi-110033 ... Applicants

(Argued by: Shri C.Raja Ram, Advocate)

VERSUS

1. The Chief Secretary,
Government of NCT of Delhi,
Players Building, Delhi Sachivalaya,
New Delhi-110002

2. Department of Women & Child Development,
GNCT of Delhi, Delhi,
Through its Director,
1, Canning Lane, Kasturba Gandhi Marg,
New Delhi-110001.

3. Sujita, Staff Nurse (Contractual),
D/o Shri Raj Singh,
RZ-29A, Raghubir Block Extension,
Preem Nagar, Najafgarh,
New Delhi. ... Respondents

(By Advocate Ms. Sumedha Sharma)

O R D E R (ORAL)

Justice M.S. Sullar, Member (J)

The contour of the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant OA and emanating from the record, is that applicants Mrs.Mani Kumari and others, were initially appointed as Staff Nurses on contract basis and their contractual period was extended from time to time. They are now working as such on contractual basis, on a consolidated remuneration of Rs.10.000/- per month since September, 2009, in various branches of respondent No. 2. They were stated to have diplomas in Nursing from recognized Institutes and have previous work experience in the field. They possess all the essential educational qualification and experience for the post of regular Staff Nurses in Government of Delhi. However, they were denied the pay scale of regular Staff Nurse, which necessitated them to file OA bearing no. 2169/2003 titled as **Paramjeet Kaur and Others** Vs. **The Chief Secretary, Govt. of NCT of Delhi and others.**

2. Having completed all the codal formalities, the OA was allowed, vide order dated 22.07.2014 (Annexure A-2) by this Tribunal. The operative part of the order reads as under:-

> "8. The contention of the respondents that since the applicants were engaged in Welfare Homes/Institutions and not in any Hospital or medical Institute, they cannot claim pay parity with the regularly appointed Staff Nurses of any Hospital is untenable and unsustainable, as they have not disputed the fact that the applicants are also discharging the

similar duties and functions of regularly appointed Staff Nurses of Hospitals.

9. In the circumstances and for the aforesaid reasons, and in view of the aforesaid legal position, the OA is allowed and the respondents are directed to pay the minimum of the pay scale of regular Staff Nurses with usual allowances except increments to the applicants also. The applicants are entitled for arrears w.e.f. 01.07.2013, i.e. the date on which the OA is filed, and the respondents shall pay the same to the applicants within a period of three months from the date of receipt of a copy of this order. No order as to costs."

3. The case of the applicants, in brief, in so far as relevant, is that, while complying with the order (Annexure A-2) of the Tribunal, the respondents have extended the period of their contractual engagement upto 28.02.2015 only. At the same time their services were ordered to be discontinued w.e.f 01.03.2015, vide impugned composite order dated 16.02.2015 (Annexure A-1) by the competent authority.

4. Now the applicants have preferred the present OA and challenged the validity of the impugned order, on the following grounds, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

"A. The impugned orders the Respondent No.2 is bad in law.

B. The action of the Respondents to terminate the contractual engagement of the applicants is clear violation of orders passed by the Hon'ble High Court of Delhi in Writ Petition No. 5259/2013 in case titled Satish Kumar & Ors Vs GNCT of Delhi & Anr.

C. The 2nd Respondent have deliberately decided to discontinue the service of the applicants herein as they had earlier approached this Hon'ble Tribunal for parity in pay.

D. The reasons given in the impugned order dated 16.02.2015 for discontinuing the contractual engagement of the Applicants is very stupid "Post creation orders of the posts of Staff Nurses are untraceable.

E. The Respondents have not framed any policy for regularization as directed by the Hon'ble High Court of Delhi in Writ Petition No. 6798/2002 "Sonia Gandhi & Ors Vs GNCT of Delhi & Ors. True copy of order dated 06.11.2013 passed in the aforesaid writ petition is marked as Annexure A-4.

F. The act of Respondents is discriminatory, mala-fide and unconstitutional being violative of Articles 14,16 and 21 of the Constitution of India."

5. On the strength of aforesaid grounds, the applicants challenged the impugned order of respondents in the manner indicated hereinabove.

6. The respondents refuted the claim of the applicants, and filed their reply wherein, it was pleaded that since the order of creation of the posts of the Staff Nurses against which contractual engagement of the applicants were initially made were untraceable, so their services were disengaged in pursuance of Office Memorandum dated 30.12.2011 of Finance Department, issued for the purpose to regulate contractual engagement. It was alleged that in view of the advice of the Finance Department, earlier the applicants were adjusted and their remunerations were released against the newly created sanctioned vacant posts of Para Medical Staff (Physiotherapist and Nurses) in the Homes/Institutions. However, the respondents have acknowledged the acceptance of earlier OA filed by the applicants and decided by this Tribunal, vide Annexure A-2. Virtually acknowledging the factual matrix and reiterating the validity of the impugned order, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

7. Having heard the learned counsel for the parties, having gone through the records with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be allowed for the reasons mentioned hereinbelow.

8. As is evident from the records that the applicants were appointed as Staff Nurses on contractual basis on a consolidated sum of Rs.10,000/- per month. Their period of contractual employment was extended from time to time and they are still working as such in various department of respondent no. 2. This Tribunal, vide Annexure A-2 directed the respondents to pay the minimum of the pay scale of regular Staff Nurses with usual allowances except increments to the applicants along with arrears, vide order (Annexure A-2).

9. Surprisingly enough, while releasing the amount of pay scale in compliance with the order of this Tribunal (Annexure A-2), at the same time the period of engagement of the applicants was ordered to be discontinued w.e.f. 1.03.2015, vide impugned composite order dated 16.02.2015 (Annexure A-1) by Deputy Director (Admn.). It is not a matter of dispute that the applicants were adjusted and their remunerations were released against the newly created sanctioned vacant posts of Para Medical Staff. Thus, it would be seen that the facts of the case are neither intricate nor much disputed.

10. Such this being the position on record, now the short and significant question that arises for our consideration in this case is as to whether the competent authority was justified in abruptly discontinuing the services of the applicants w.e.f. 1.03.2015, vide impugned composite order (Annexure A-1) or not?

11. Having regards to the rival contentions of learned counsel for the parties, to us, the answer must obviously be in the negative in this regard.

12. A bare perusal of record/impugned order would reveal that the only reason for disengagement of the applicants mentioned (therein) that the order of creation of posts of Staff Nurses against which contractual engagement of applicants were initially made are untraceable. This to our mind, is not a valid ground, much less cogent to disengage the services of the applicants. On the contrary, the action of the respondents appears to be smeared with malice as the services of applicants were discontinued, while releasing the amount of their regular pay scale, in compliance of order (Annexure A-2) of this Tribunal, by way of impugned composite order dated 16.02.2015 (Annexure A-1).

13. Moreover, it is not at all the case of the respondents that the services of the applicants were discontinued on account of regularly appointed incumbents on the indicated posts. As indicated hereinabove, admittedly, the applicants were adjusted against the newly created sanctioned posts of Para Medical Staff which are still lying vacant. The competent authority no doubt has the power to disengage the services of the applicants but that can only be done in case regular appointments are made to fill up those posts or their work and conduct is not satisfactory and not otherwise. Therefore, the applicants who are working on contract basis against vacant posts, indeed

cannot legally be replaced by another set of contractual/ad-hoc employees. This matter is no more 'res-integra' and is now well settled.

14. An identical question came to be decided in a celebrated judgment in case **State of Haryana and Others** Vs. **Piara Singh and Others etc. etc.** (1992(4) SLR 770), wherein it was ruled that the normal rule, of course, is that regular recruitment should be made through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such situation, efforts should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible, and an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of appointing authority.

15. Again a Full Bench of this Tribunal had an occasion to deal with the similar situation in a bunch of OAs decided on 25.03.2010 along with main OA bearing No.1184/2009. Having considered the law laid down by Hon'ble Supreme Court on the point, it was held as under:-

> "4.The Supreme Court, while considering an issue regarding the regularisation of ad hoc / temporary employees in Piara Singh Vs. State of Haryana, 1992 (4) SLR 770 held, inter alia, that :
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> > "Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."
>
> While considering the case of termination of services of ad hoc doctors in the Railways in a batch of appeals including Dr. A.K.

Jain & Ors. Vs. Union of India & Ors., 1987 (Supp) SCC 497, the Supreme Court, inter alia, observed thus:

> "No ad hoc Assistant Medical Officer/ Assistant Divisional Medical Officer who may be working in the Railways shall be replaced by any newly appointed AMO/ ADMO on ad hoc basis. Whenever there is need for the appointment of any AMO/ ADMO on ad hoc basis in any zone the existing ad hoc AMO/ ADMOs who are likely to be replaced by regularly appointed candidates shall be given preference."

Similar issue regarding regularization of contractual teacher under NDMC was considered by Delhi High Court in Dilip Kumar Jha & Ors. Vs. New Delhi Municipal Council in WP (C) numbers 16499 ┬ 16502/2004, decided on 1.09.2006. The contractual teachers were seeking directions for their regularization. The High Court dismissed the petition with the following observations:

> "6. Writ petitions are accordingly dismissed, subject to the direction that the respondent will not replace the petitioners with other contractual employees and in case by virtue of regular appointment the petitioners become surplus, the respondent will follow the rule of last come first."

5. The issue is thus well settled on the basis of the judicial precedents cited above that a set a contractual employees shall not be replaced by another set of contractual employees except if the contractual employees are not working satisfactorily. The reference is thus answered. The judgement in Ruchi Singh (supra) is overruled to this extent. The Original Applications are remitted to the DB for further adjudication."

16. Meaning thereby, the services of applicants who were adjusted against the sanctioned vacant posts cannot be abruptly discontinued unless and until regular appointments are made or their work and conduct is not satisfactory and not otherwise. Even in case of replacement of applicants by virtue of regular appointment then the respondents will naturally follow the rule of "last come first go". Thus, the ratio of law laid down in the aforesaid judgments is *mutatis mutandis* applicable in the present controversy and is the complete answer to the problem in hand. Therefore, the impugned order, as it relates to disengagement of the applicants is concerned, cannot legally be sustained in the eyes of law.

17. No other point, worth consideration, has either been urged or pressed for by the learned counsel for the parties.

18. In the light of aforesaid reasons, the instant OA is hereby accepted. The impugned order relatable to the disengagement of the services of the applicants is hereby set aside. However, the parties are left to bear their own costs.

(Dr.BIRENDRA KUMAR SINHA) (JUSTICE M.S.SULLAR)
MEMBER (A) MEMBER (J)

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