

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1058 OF 2015

New Delhi, this the 19th day of January,2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMNISTRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

1. Ms.Perna,
 d/o Sh.Rajender Singh,
 R/o Kh.No.11/22, B-Block,
 Gali No.2, Rajiv Nagar,
 Libaspur, Delhi 42
 DOB 22.4.87
 DOJ 02.12.11
 (ANM) 28 years

2. Ms.Urvashi Tyagi,
 D/o Sh.Pankaj Tyagi,
 R/o G-33, Aruna Park,
 Shakarpur, Delhi-92
 DOB 06.07.1992
 DOJ 05.12.11
 (ANM) 28 years

3. Ms.Garima,
 D/o/W/o Sh.Rajender Singhal,
 R/o Weavers Colony, Ashok Vihar,
 Ph-IV, Delhi 52
 DOB 20.3.93
 DOJ 07.01.13
 (ANM) 22 years

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| 4. | Ms.Seema
D/o Sh.Shish Pal Singh Rawat,
R/o C-260, Albert Square,
Gole Market, New Delhi
DOB 01.10.1991
DOJ 14.1.13
(ANM) 24 years | í í . | Applicants |
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(By Advocate: Mr.S.N.Gupta)

Vs.

1. Govt. of NCT of Delhi
Through Secretary (Health services)
I.P. Sachivalaya, New Delhi.
2. Director of Health Services
Govt. of NCT of Delhi
F-7 Karkardooma, Delhi-32.

(By Advocate: Shri Vijay Kr. Pandita)

ORDER

Raj Vir Sharma, Member(J):

The applicants have filed the present O.A. seeking the following reliefs:

- Øi) Direct the respondents to declare the applicant as deemed regular appointee and consider the applicants for confirmation on the various posts as held by them on the basis of their service record with all consequential benefits and
- ii) To direct the respondents to evolve the scheme of regularization of the applicants and such appointees in the spirit of the earlier directions issued by the various HonØble High Court especially the direction issued in supra Sonia Gandhi's case as well as on the basis of the orders passed by this HonØble court in various O.A.

- iii) To restrain the respondents from terminating the services of the applicants till the pendency of this O.A.
- iv) To direct the respondents to grant leave benefits to the applicants as directed by this Honøble court as well as by the Honøble High Court in the case titled as Govt. of NCT Vs. Suman Singh decided on 20.3.2013.
- v) Grant any other or further relief which Honble Tribunal may consider just and proper in the facts and circumstances of the present case.ö

2. It is the case of the applicants that they possess the requisite qualifications for appointment to the post of Auxiliary Nurse/Midwife. After open advertisement and selection, the respondents appointed them as Auxiliary Nurses/ Midwives on short term contract basis during the period from 2011 to 2013. Thereafter, their services have been extended from time to time without any break. They have completed one year of continuous service, and are, thus, entitled to be regularized in service as Auxiliary Nurses/Midwives.

2.1 In **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others**, W.P. (C) No.6798 of 2002 and W.P. (C) Nos.8093-8102 of 2003, decided on 6.11.2013, the Honøble High Court of Delhi directed the Government of NCT of Delhi to frame a one-time policy of regularization and to amend the existing rules pertaining to service in different Departments. The Honøble High Court also directed that the existing

contractual employees shall be considered for appointment to the new posts as per the policy to be framed.

2.1.1 It is stated by the applicants that the judgment in **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others** (supra) has not yet been implemented by the Government of NCT of Delhi. In January 2014, Advertisement No.01/14 was issued by the Delhi Subordinate Services Selection Board (DSSSB) for recruitment to various paramedical posts under the Government of NCT of Delhi, including the post of Auxiliary Nurse/Midwife. On 4.12.2014, the DSSSB also issued notification scheduling the date of recruitment examination for the said post. The written examination and interview were also held in March 2015. It is, thus, contended by the applicants that instead of taking a policy decision for regularization of contractual employees, like the applicants, in compliance with the direction of the Honøble High Court of Delhi in **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others** (supra), the respondent-Government of NCT of Delhi initiated the recruitment process to fill up the posts held by them and other contractual employees, as a result of which they would be rendered jobless. In support of their claim, the applicants also relied on the orders passed by the Tribunal in **Ms.Monika Garg and others, etc. Vs. Chief Secretary, Government of NCT of Delhi, etc.,** OA Nos. 492, 493 and 500 of 2014, decided on 17.2.2014; **Sanjay Pal Rawat and others Vs. The National Capital Territory of Delhi and another,** OA

No.1755 of 2014, decided on 20.5.2014; and **Ms.Pooja and others Vs. Govt.of NCT of Delhi and another**, OA No.3234 of 2014, decided on 11.2.2015, whereby the Government of NCT of Delhi was directed to take a decision on the representations made by the contractual employees in terms of the judgment of the Honøble High Court of Delhi in **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others** (supra) within the period stipulated in the orders. The Tribunal also directed the respondent-Government of NCT of Delhi not to discontinue the services of the applicants in those cases.

2.2 It is also stated by the applicants that in O.A.No.1710 of 2011 (**Suman Singh Vs. Govt. of NCT of Delhi**), decided on 20.10.2011, the Tribunal directed that the contractual employee would be entitled to all types of leave as admissible to regular employees. The Government of NCT of Delhi filed W.P.(C) No.4641 of 2012 challenging the Tribunal's order dated 20.10.2011. The Honøble High Court of Delhi, vide judgment dated 20.3.2013 passed in W.P. (C) No.4641 of 2012 (**Govt. of NCT of Delhi and another Vs. Suman Singh**), upheld the Tribunal's order dated 20.10.2011 and dismissed the writ petition. Therefore, denial of leave and other benefits, as admissible to regular employees working as Auxiliary Nurses/Midwives under the respondents, is illegal, and appropriate direction should be issued to the respondents to grant the leave and other benefits to them.

3. The respondents have filed a counter reply opposing the O.A.. Relying on the decisions of the Honøble Supreme Court, including the Constitution Bench decision in **Secretary, State of Karnataka & others Vs. Uma Devi and others**, (2006) 6 SCC 1, the respondents have submitted that the applicants are not entitled to the reliefs claimed by them. However, along with their counter reply, the respondents have filed a copy of the letter No.F.19(01)/2014/S-IV/223-224 dated 16.2.2015 (Annexure R/8) addressed by Shri Ashutosh Kumar, Special Secretary (Services), Government of NCT of Delhi, to all Principal Secretaries/Secretaries/HODs, Government of NCT of Delhi, and all Heads of Local Bodies/Autonomous Bodies/ Undertaking/ Corporation/ Boards/Institutions under Government of NCT of Delhi, on the subject of engagement of contractual employees. The relevant portion of the said letter dated 16.2.2015 is reproduced below:

öSubject: Regarding engagement of contractual employees.

The Government of NCT of Delhi would like to take a view on the existing policy regarding status of contractual employees engaged in various departments and organizations under this Government.

Therefore, services of Contractual employees engaged by the departments should NOT be terminated till further instructions in the matter. If any terminations are likely to take place, the same should be stopped till further orders.ö

The respondents have also stated that SLP (C) No. 2576 of 2014, filed by the Government of NCT of Delhi against the decision of the Honøble High Court of Delhi in **Govt. of NCT of Delhi Vs. Suman Singh** (supra), and SLP Nos.31596-31606 of 2014, filed by the Government of NCT of Delhi

against the judgment of the Honøble High Court of Delhi passed in **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others** (supra), are still pending before the Honøble Supreme Court.

4. No rejoinder reply has been filed controverting the statements made by the respondents in their counter reply.

5. We have carefully perused the pleadings of the parties, and have heard Shri S.N.Gupta, the learned counsel appearing for the applicants, and Shri Vijay Kr.Pandita, the learned counsel appearing for the respondents.

6. Shri S.N.Gupta, the learned counsel appearing for the applicants, invited our attention to the decision of the Tribunal in **Ms.Pooja's case** (supra) and submitted that the Tribunal may dispose of the present O.A. by issuing similar direction as issued in **Ms.Pooja's case** (supra). In **Ms.Pooja's case**, the Tribunal, while disposing of the O.A., directed the respondent no.1, i.e., Chief Secretary, Govt. of NCT of Delhi to take a decision on the combined representation filed by the applicants in that case in terms of the judgment of the Honøble High Court of Delhi in **Sonia Gandhi's case** (supra), as clarified in the order dated 2.5.2014 in Review Petition Nos. 198/2014 and 202/2014. The Tribunal also directed that till the decision is taken and communicated to the applicants, the respondents shall not discontinue the services of the applicants.

7. *Per contra*, Shri Vijay Kr.Pandita, the learned counsel appearing for the respondents, submitted that when the Government of NCT of Delhi has already issued order dated 16.2.2015, *ibid*, directing that the services of contractual employees engaged by all Departments should not be terminated till further instructions in the matter, and that if any terminations are likely to take place, the same should be stopped till further orders, issuance of any direction by the Tribunal is not warranted in the present case.

8. After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties, in the light of the decisions of the Honøble Supreme Court, which have been referred to and relied on by the respondents in their counter reply, we find no merit in the applicantsø prayer to direct the respondents to declare them as deemed regular employees and to consider confirmation of their services in the posts held by them with all consequential benefits. In view of the letter dated 16.2.2015 (*ibid*) issued by the Government of NCT of Delhi, and also in view of the fact that SLP No.2576 of 2014 filed by the Government of NCT of Delhi against the judgment of the Honøble High Court of Delhi in **Govt. of NCT of Delhi Vs. Suman Singh** (supra) and SLP Nos.31596-31606 of 2014 filed by the Government of NCT of Delhi against the judgment of the Honøble High Court of Delhi passed in **Sonia Gandhi & others, etc. Vs. Govt. of NCT of Delhi & others** (supra) are still pending before the

Honble Supreme Court, we are not inclined to issue any direction to the respondents on the prayers made by the applicants, vide paragraph 8 (ii) to (iv) of the O.A. The reliance placed by the applicants on various orders passed by the Tribunal is of no avail. However, we would like to observe here that the claims of the applicants in the present case would be considered and decided by the respondents in the light of the decisions to be rendered by the Honble Supreme Court in SLP Nos.31596-31606 of 2014 and SLP No.2576 of 2014, if they are found to be similarly placed as contractual employee-respondents in the said SLPs.

9. With the above observations, the O.A. is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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