

**Central Administrative Tribunal
Principal Bench**

**OA No.2058/2016
CP No.303/2016
MA No.1979/2016**

New Delhi, this the 13th day of February, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Dr. (Ms) Daisy Panna, Age 47
D/o Shri G.P. Panna
R/o D-405, Rail Vihar
Sector 15/II, Gurgaon-122001.
2. (Ms) Swati Malik, Aged 25
D/o Shri Rajvir Malik
R/o Plot No.5, OM Vihar Phase-I
Uttam Nagar, New Delhi-110059.
3. (Ms) Garima, Age 26
D/o Shri Arun Kumar
R/o House No.608, Street No.2
Shyam Park Main
Sahibabad-201005, Ghaziabad (U.P.)
4. Vinod Kumar, Age 63
S/o Late Shri Sita Ram
R/o F-1, Plot No.307
Sector 4, Vaishali
Ghaziabad-201010(U.P.)
5. Dr. Jyoti Bhushan Babbar, Age 61
S/o Shri S.R. Babbar
35-UA, Jawahar Nagar
Delhi-110007.
6. Priyanka Nagar, Age 27
D/o Shri Ramesh Nagar
D-244, Dabua Colony
Near Vishwas Convent School
N.I.T., Faridabad.
7. Pooja Garg, Age 35

D/o Shri R.C. Gupta
B-188, Prashant Vihar
Rohini Sector 14
Delhi-110085.

8. Manisha, Age 30
D/o Shri S.D. Sharma
R/o D-20, NIHFW
New Delhi-110067.

...Applicants

(By Advocates: Shri Pravir K. Jain)

Versus

1. Union of India
Through Its Secretary
Ministry of Health and Family Welfare
(Training Division)
Government of India
Nirman Bhawan
New Delhi-110011.

2. National Institute of Health
and Family Welfare through its Director
Munirka, Baba Gangnath Marg
New Delhi-110067.

..Respondents

(By Advocates: Shri Satish Kumar for Res. No.1 and Shri H.D. Sharma for Res. No.2)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

MA No.1979/2016

In view of the averments made in the MA, applicants are permitted to file joint OA.

OA No.2058/2016

2. The applicants in the present OA were engaged on contract basis on consolidated emoluments in the National

Institute of Health and Family Welfare in Reproductive and Child Health Project (RCH). Their tenure was up to 31.03.2017. This contractual tenure was, however, brought to an end vide the impugned order dated 06.05.2016 giving one month's notice w.e.f. 07.05.2016. The grievance projected in the present OA is that in other similar projects, employees were allowed to continue whereas the services of the present applicants were dispensed with.

3. We have heard the learned counsel appearing for the parties.

4. Vide the impugned order dated 06.05.2016, services of the applicants were dispensed with giving one month's notice before expiry of their contractual period only on the ground of re-organization/re-structuring, whereas similarly engaged contractual employees were allowed to continue. Vide order dated 17.11.2016, this Tribunal has already held that the applicants were treated in a hostile and discriminatory manner, and it was on the basis of hostile treatment that directions were issued for immediate re-engagement of applicants. The impugned order does not contain any reason, much less a valid reason, except referring to re-organization/restructuring of RCH-II Unit at NIHFW & SIHFW/CTIs. The impugned order is thus not sustainable in law and is liable to be quashed.

5. This OA was filed on 03.06.2016. However, due to summer vacations up to 06.06.2016, the OA could not be listed before the court. The OA was taken up on 07.06.2016. While issuing notice to the respondents, the Tribunal also directed maintenance of *status quo* with regard to the services of the applicants. The intention of the order was very clear. The respondents, however, chose not to implement the directions. The applicants filed a Contempt Petition in which notice was issued. On consideration of the relevant contentions, this Tribunal vide its order dated 17.11.2016 directed the respondents to allow the applicants to perform their duties as they were doing earlier till further orders with immediate effect. This order was duly complied with and the applicants were taken back to service for the remaining period of their contract. The applicants also projected the claim for wages. On considering the claim of the applicants, this Tribunal vide its order dated 01.12.2016 made a suggestion to Shri H.D. Sharma, learned counsel appearing for the respondents to seek instructions for payment of half of the salary for the period the applicants remained out of service till their re-joining. Today, Shri Satish Kumar, has appeared on behalf of respondent No.1. Respondent No.1 has also filed an affidavit denying the claim of the applicants on the ground that the applicants were out of service and their

salary cannot be paid applying the principle of “no work no pay”.

6. We have given our detailed reasons in the order dated 17.11.2016 for reinstatement of the applicants. One of the ground is discriminatory treatment with the applicants. The respondents have now implemented the directions and reinstated the applicants for the remaining period of their contract but are denying salary to them for the period they were kept out of service despite a *status quo* order of this Tribunal. Besides, the suggestion of the Tribunal for payment of half of the wages has not been acceded to. The applicants have relied upon the judgment of the Apex Court reported as AIR 1979 Supreme Court 75- **M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd. and others**. In the said judgment, the Hon’ble Supreme Court has ruled that where the termination of the retrenched worker is held to be illegal, the employee is entitled to full salary, notwithstanding, the fact that the said worker remained out of work/job. Though, the judgment is under the labour laws but its analogy can be attracted in the present case also. The applicants are contractual employees. Their services were dispensed with in a discriminatory manner while allowing the similarly situated persons to continue. On the direction of this Tribunal in the order dated 17.11.2016,

the respondents re-engaged them. Under such circumstances, denial of atleast half salary to the applicants is not justified. The doctrine of "no work no pay" will not be attracted under such circumstances particularly when it has been observed by this Tribunal that the order was discriminatory in nature which violates the principles enshrined under Articles 14 and 16 of the Constitution.

7. This Application is accordingly allowed. Impugned order dated 06.05.2016 is hereby quashed. Respondents are further directed to pay half salary to the applicants for the period they remained out of job till their rejoining within a period of one month. No order as to costs.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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