

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.4246/2015

This the 25th day of February 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. Ganesh Bhambhu s/o Purkha Ram Bhambhu
Age 32 years
Address 140, Shree Krishan Nagar
Near Ashok Uddan Pal Road
Jodhpur-Rajasthan
2. Harish Jangir s/o Purshottam
Age 27 years
Vill. Post Saidpur
Teh. Buhane
Distt. Jhunjhunu
Rajasthan 333516
3. Ashok Kumar s/o Daya Ram
Age 27 years
Address 4/52, Veena Enclave
Near Rajdhani Park,
Nangloi 41
4. Santu Kumari d/o Sagar Mal Saundalia
Age 28 years
address Village Ganeshpura
Post Dukiya via Palsana
Distt. Sikar (Rajasthan)
5. Ramswaroop Bhuria s/o Ghisa Ram Bhuria
Age 30 years
Address: Vill Bhurio Ka Bas
Post Lalasi, Teh. Laxmigarh
Distt. Sikar 332315
6. Deep Chand s/o Mool Chand
Age 28 years
Address: VPO Ghasoli
Teh. Kishan Garh, Bass
Distt. Alwar (Rajasthan)
7. Elia Kim d/o M. Khangin
Age 28 years
Address : RN 397 Krishi Bhawan
Dr. Rajendra Prasad road
New Delhi-1
8. Betty Louis d/o T A Louis
Age 28 years
Address: Thekkiniyath House
Kerikkara PO Vandiperiyar
Kerala

9. Alka d/o Laxmi Narayan
Age 28 years
Address: 27/222, VPO Ranikhera
Delhi
10. Rekha Joshi s/o late Mr. Prajapati
Age 30 years
Address: H.No.731, Shanti Samiti
Tahirpur, Delhi
11. Anumol Chacko d/o Chacko VM
Age 28 years
Address: H.No.131
DDA Janta Flat (OLD) Chilla
Mayor Vihar, Phase I
Delhi-96
12. Mahesh Kumar Verma
s/o Puran Mal Bunker
age 27 years
Address: VPO Ghasipura
Teh. Shahpura, Jaipura (Rajasthan)
13. Swati Hardy d/o Natananiel Hardy
Age 26 years
Address: A-40, 2nd Floor
Bhagat Singh Gali
Fazalpur Mandawali
Delhi-92
14. Meenakshi Gupta d/o Chander Prakash Gupta
Age 29 years
Address: H. No.400/2, Line Par
GN-7, New Patel Park
Bahadur Garh, Distt. Jhajjar (HR)
15. Detty Joseph d/o VM Joseph
Age 29 years
Address: Valtappillil House
Thadiumpadu, PO Perumkala Idukki
Distt. Kerala 685602
16. Swati Sahu s/o Hari Om Rathore
Age 29 years
Address: Flat No.F2
Building No.B-11, DLF Dilshad Ex –II
Bhopura Sahibabad
Ghaziabad, UP 201005
17. Shyam Lal Vishnoi s/o Gola Ram
Age 28 years
Address: Hem Nagar
VIP Joliyalee, Jodhpur
Rajasthan
18. Avinash Yadav s/o Satveer Singh
Age 27 years
Address: VPO Anhawas
Teh. Behror, Distt. Alwar 301703

19. Monika Yadav d/o Iswar Singh
Age 24 years
Address: H.No.118, Vill Hasanpur
Najafarh, New Delhi-73
Post Office Ujwa
20. Manu Mary Jose d/o Jose Varkey
Age 29 years
Address: Piriyanmmakal
Ezhokumvayal, Idukki
Kerala 685553
21. Amrit Prasad s/o Gautam Prasad
Age 26 years
Address: 36, Vyas Colony
Nawa City, Distt. Nagur 341509
22. Anuj Prasad s/o Gautam Prasad
Age 26 years
Address: 36, Vyas Colony
Nawa City, Distt. Nagur 341509
23. Shalini d/o Vijay Kumar
Age 28 years
Address: F-66, Shyam Vihar
Part I, Near Deendarpur
Misali Devi Gyam Public School
Najafgarh-43
24. Swapna S d/o T M Swayamvaran
Age 29 years
Address: D-25, MCD Flat's
Banglow Road, Kamla Nagar
Delhi-7
25. Priyanka d/o Ramphal Singh
Age 24 years
Address: H.No.131
Ishwar Colony, Bawana
Delhi-39
26. Jyoti d/o Kuldeep
Age 23 years
Address: B-2/1, Street No.8
Jagatpuri Extn., Delhi-93
27. Sweeti d/o Umed Singh
Age 26 years
Address: Mundela Khurd
New Delhi-73
28. Preeti Rani d/o Karan Singh
Age 31 years
Address: E/161, Krishna
Gali No.4, East Babarpur
Shahdara, Delhi-32
29. Sonia Rana d/o Rajendra Singh
Age 28 years
Address: C-9/113
Yamuna Nagar, Delhi

30. Lekhraj Gupta s/o Suresh Chand Gupta
Age 26 years
Address: Vill Sapotra
Distt. Karauli (Rajasthan)
31. Kamlesh Saini d/o Panni Lal Singh
Age 26 years
Address: Holi Mohalla
Ram Garh, Alwar (Rajasthan)
32. Dinesh Kumar s/o Shankar Lal
Age 28 years
Address: Gulab Singh Haveli
v/p Sindhori, Distt. Barmer (Raj.)
33. Jyoti Kanwar d/o Mohan Singh
Age 27 years
Address: H.No.21, Riddhi Nagar
Maharana Pratap Marg
Panchyawala, Jaipur (Raj.)
34. Manoj Kumar Meena s/o Shiv Charan Meena
Age 29 years
Address: V/P Piloda
Teh.Gangapur City
Distt. Sawai Madhopur, Rajasthan
35. Samay Singh Bairwa s/o Shiv Lal Biarwa
Age 28 years
Address: Village Rampura
Post Morda, Teh. Todabhim
Karoli, Rajasthan
36. Shahbaz Khan s/o Mr. Manzoor Ahmad Khan
Age 25 years
Address: 7-B-43
44 Vigyan Nagar Extn.
Kota, Rajasthan 324005
37. Javed Jilani s/o Abdul Salam
Age 26 years
Address: 56-A, Pragati Naga
Bajrang Nagar, Police Line
Kola (Raj.)

..Applicants

(Mrs. Avnish Ahlawat and Mr. N.K. Singh, Advocates)

Versus

1. North Delhi Municipal Corporation of Delhi
Through Commissioner (MCD)
Civic Centre, Minto Road
New Delhi
2. Administrative Officer (Health)
North Delhi Municipal Corporation
Civic Centre
Minto Road, New Delhi

3. Medical Superintendent
Hindu Rao Hospital
North Delhi Municipal Corporation
Civic Centre
Minto Road, New Delhi

..Respondents

(Mr. Manjeet Singh Reen, Advocate

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

The applicants herein were appointed as Grade A Staff Nurse at Hindu Rao Hospital under North Delhi Municipal Corporation on different dates i.e. 27/28.02.2013. The prayer made by them in the present OA is for quashment of the order dated 30.10.2015 whereby their contractual services were discontinued and for issuance of a direction to them to frame a scheme to regularise their services. The prayer made in the OA read thus :-

- “i) Pass an order of quashing the impugned order dated 30.10.2015 passed by the Respondents;
- ii) Direct the respondents to formulate a scheme to regularize and fill up all vacant posts of A grade Staff Nurse by giving age relaxation and weightage for the number of years applicants worked as contractual employee;
- iii) Direct the respondents not to replace the contractual employees with contractual employees and so long as the vacancies are available;
- iv) Any other relief which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. During the course of the hearing, Ms. Avnish Ahlawat, learned counsel for applicants submitted that she would press for the only relief that so long as sanctioned posts in different hospitals of the Corporation are vacant, the services of the applicants may be utilized against those on contract basis and the applicants would have no difficulty if their services are substituted on the availability of regularly selected candidates. To make her argument that 21 sanctioned posts of A Grade Staff Nurse are vacant good, she made a reference to letter dated 27.11.2015 authored by the AO, Ministry of Health and Family Welfare (D&C). According to her, total sanctioned posts of A Grade Nurse are 821 and the individuals in position including contractual staff are

778, thus 34 posts are unfilled. The position is admitted in the counter reply filed on behalf of respondents.

3. Shri Manjeet Singh Reen, learned counsel for respondents opposed the plea with reference to Memo dated 28.12.2013 (page 73 of the paper book) in terms of para 1 of which the engagement of the applicants herein was purely on contract basis for a period of six months or till such time the post can be filled up on regular basis through DSSSB, whichever is earlier. The engagement being purely temporary could be terminated without assigning any reason or giving any notice. Finally he produced a copy of order dated 23.02.2016 passed by us in OA No.4402/2015 with O.A. No.4237/2015 and submitted that the controversy involved in the present OA is, in all fours, of the said order. The perusal of the order, relied upon by Shri Reen, learned counsel for respondents, revealed that with the consent of Sr. Counsel for the Corporation in the said case, we had issued a direction that in the event the available vacancies in a particular unit/hospital are filled up on regular basis but the same remain unfilled in different unit/hospital, the respondents should explore the possibility of engaging the applicants in the said OAs for their contractual appointment in the Hospital/unit. The directions contained in para 24 of the said order read thus :-

“24. When we do not find any merit in the Original Application of the applicants, in view of the fair stand taken by Mr. K.K. Rai, learned senior counsel for respondent Nos. 2 to 4 (EDMC), we dispose of the same with the following directions:-

- i) The respondents are entitled to replace the services of contractual doctors, including the applicants herein by regularly selected appointees.
- ii) Merely because they have rendered contractual service, the applicants would not acquire any right for regularization.
- iii) While discontinuing the services of the applicants, the respondents would resort to the principle of ‘last come first go’, i.e., the contractual Staff Nurse appointed last would be discontinued first.
- iv) The names of such contractual doctors, who cannot be continued in service any more on account of regular appointment, would be kept in a separate pool and in case of requirement of contractual Staff Nurse in future, they will be given preference for such engagement.
- v) In the event the available vacancies in a particular unit/hospital are filled up on regular basis but the same remain unfilled in different unit/hospital, the respondents would explore the possibility of engaging the applicants

herein for their contractual appointment in the hospital/unit where vacancies remain unfilled.

No costs.

In view of the aforementioned, interim Order 03.12.2015 stands vacated.”

4. In terms of the order relied upon by the learned counsel for respondents, the contractual employees, continuing against the sanctioned posts on contract basis, may be continued to the extent the vacancies remained unfilled and should be substituted with the regularly selected candidates. Such is also the view taken by the Hon’ble High Court of Delhi in **Government of NCT of Delhi & another v. Shallu Sharma & others** 83 (2000) DLT 316. Para 48 of the judgment reads thus:-

“48. Consequently, we too would direct the Petitioners to allow the Respondents to remain in their posts till their vacancies are duly filled up according to Rules. If the replacements of some of the Respondents have already been found, those Respondents must give way to the regular appointees regardless of any interim orders in their favour. Such of the Respondents who were out of employment because they were not beneficiaries of any interim orders of the Tribunal should be reinstated by 31st December, 1999 unless their posts have been occupied by regular incumbents. Since learned counsel for the Petitioners stated on affidavit that there are not too many vacancies, we think that many of the Respondents will not benefit. This cannot be helped.”

5. In view of the aforementioned arguments put forth by the learned counsels for the parties, the OA stands disposed of in terms of the order passed in OA No.4402/2015 dated 03.02.2016 (supra). It is made clear that the 34 sanctioned posts shown as vacant in different hospitals of MCD should be utilised to accommodate the applicants on contract basis with due regard to the order of this Tribunal relied upon by the respondents. No costs.

(V. N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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